

No. 14230

United States
Court of Appeals
for the Ninth Circuit

THEODORE ROOSEVELT GLENN,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the District Court for the District of Alaska,
Third Division

FILED

JUN 29 1954

**PAUL P. O'BRIEN
CLERK**

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[Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Third Division

Criminal No. 2818

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THEODORE ROOSEVELT GLENN,
Defendant.

INDICTMENT

The grand jury charges:

That sometime during the month of November, 1950, at or near Palmer, Third Judicial Division, Territory of Alaska, Theodore Roosevelt Glenn being over the age of Sixteen (16) years, did carnally know and abuse a female person, to-wit: Eva Nickita of the age of Fifteen (15) years.

Count I.

Section 65-9-10, ACLA, 1949

That sometime during the month of November, 1950, at or near Palmer, Third Judicial Division, Territory of Alaska, Theodore Roosevelt Glenn, did have unnatural carnal copulation by means of the mouth, to wit: the said Theodore Roosevelt Glenn did put his mouth on the private parts of a female, to-wit: Eva Nickita and did then and there agitate his tongue therein.

Count II.

Section 65-9-10, ACLA, 1949

That sometime during the month of November,

1950, at or near Palmer, Third Judicial Division, Territory of Alaska, Theodore Roosevelt Glenn did commit sodomy with a female, to-wit: Eva Nickita, the said Theodore Roosevelt Glenn did then and there insert his penis into the anus of Eva Nickita and did then and there agitate his said penis back and forth in the said anus of the said Eva Nickita.

A True Bill.

/s/ HARRY E. STIVER,
Foreman

/s/ LYNN W. KIRKLAND,
United States Attorney

[Title of District Court and Cause.]

MINUTE ORDER FIXING BAIL

Now at this time on motion of L. W. Kirkland, Assistant United States Attorney,

It Is Ordered that Bail in cause No. 2818 Cr., entitled United States of America, plaintiff, versus Theodore Roosevelt Glenn, defendant, be and it is hereby fixed in the sum of Ten Thousand Dollars (\$10,000.00).

Entered in Journal March 12, 1953.

[Title of District Court and Cause.]

ARRAIGNMENT AND SETTING TIME
TO PLEAD

Now on this day came L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government, came also the defendant, Theodore Roosevelt Glenn in cause No. 2818 Cr., entitled United States of America, plaintiff, versus Theodore Roosevelt Glenn, defendant, in custody of the United States Marshal and not represented by his counsel; whereupon defendant was brought before the bar of this Court and being asked if he was indicted by his true name and answering that he was, and defendant waiving reading of the indictment, a copy of said indictment, including a list of names of the witnesses appearing before the Grand Jury for the purpose of this indictment, was delivered to said defendant.

Whereupon, said defendant asking time within which to enter his plea or otherwise move against said indictment, the time therefor is set for 10:00 o'clock a.m. of Tuesday, March 31, 1953, and defendant was remanded to the custody of the United States Marshal.

Entered in Journal March 24, 1953.

[Title of District Court and Cause.]

PLEA OF NOT GUILTY

Now on this 31st day of March, 1953, came L. W. Kirkland, Assistant United States Attorney, came also the defendant Theodore Roosevelt Glenn in custody of the United States Marshal, and represented by his counsel, Harold J. Butcher and John Shaw, and said defendant having heretofore and on the 24th day of March, 1953 been duly arraigned, announced to the Court that he is ready to enter his plea herein, is asked by the Court if he is guilty or not guilty of the crime charged against him in the indictment, to-wit: Rape; Sodomy, to which defendant says he is not guilty and therefore puts himself upon the Country, and the Assistant United States Attorney, for and in behalf of the Government does the same, and defendant was remanded to the custody of the United States Marshal.

Entered in Journal March 31, 1953.

[Title of District Court and Cause.]

PRAECIPE FOR SUBPOENA ON BEHALF OF UNITED STATES

The Clerk of said Court will issue Subpoena for the following-named persons to appear before said Court, at the United States Court Rooms, in Anchorage, at 9 o'clock, a.m., on the 2nd day of Sep-

tember, 1953, then and there to testify in behalf of the United States:

One (1) subpoena issued in blank.

This 18th day of August, 1953.

Subpoena issued September 2, 1953.

.....,

United States Attorney

[Endorsed]: Filed August 18, 1953.



[Title of District Court and Cause.]

SUBPOENA

The President of the United States, Greeting:

To: Eva Nickita, Lazy Mountain Home.

You Are Hereby Required, That all and singular business and excuses being set aside, you appear and attend before the District Court, Territory of Alaska, Third Division, to be held in the Court Room of said court at Anchorage, in the Territory of Alaska, on the 2nd day of September, A.D. 1953, at 9:00 o'clock a.m., then and there to testify in the above-entitled cause, now pending in said Court, on the part of the plaintiff, and you are not to depart the Court without leave of the Court. And for failure to attend, as above required, you will be deemed guilty of contempt of Court, and liable to pay the party aggrieved all loss and damage sustained thereby.

Witness, The Honorable George W. Folta, Judge of the said District Court, Territory of Alaska,

That the testimony of the said David Collins Glascock is necessary as a witness for the Government on case entitled, United States of America vs. Theodore Roosevelt Glenn.

Wherefore, your petitioner prays that a writ of Habeas Corpus Ad Testificandum may be granted and issued directed to the Warden commanding him to produce the body of the said David Collins Glascock before your honor at a time and place therein specified and then and there to appear as a witness for the government in aforementioned case entitled United States of America vs. Theodore Roosevelt Glenn.

Dated at Anchorage, Alaska, this 11th day of September, 1953.

/s/ LYNN W. KIRKLAND,
Assistant United States Attorney

[Endorsed]: Filed September 14, 1953.

[Title of District Court and Cause.]

ORDER

To: Fred P. Wilkinson, Warden, United States Penitentiary, Steilacoom, Washington; Walter E. Huntley, United States Marshal, Anchorage, Alaska; United States Marshal, Western District of Washington:

You are hereby ordered and commanded to produce the body of David Collins Glascock, held in

your custody in the United States Penitentiary under Judgment, Sentence and Commitment of Fifteen (15) months; the said David Collins Glascock to be and appear in the District Court at 10 a.m. on the 21st day of September, 1953, as a witness for the government in the case of the United States of America vs. Theodore Roosevelt Glenn.

Dated at Anchorage, Alaska, this 11th day of September, 1953.

/s/ GEORGE W. FOLTA,
District Judge

Entered in Journal Sept. 14, 1953.

[Endorsed]: Filed September 14, 1953.

[Title of District Court and Cause.]

TRIAL BY JURY

Now on this 23rd day of September, 1953, came L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government, came the defendant in custody of the United States Marshal and with his counsel Harold J. Butcher, and both sides announcing themselves as ready for trial in cause No. 2818 Cr., entitled United States of America, plaintiff, versus Theodore Roosevelt Glenn, defendant, the following proceedings were had, to-wit:

The Deputy Clerk, under the direction of the Court, proceeded to draw from the Trial Jury Box, one at a time, the names of the members of the Regular Panel of Petit Jurors and respective coun-

sel examined and exercised their challenges against said Jurors, so drawn.

At 11:50 o'clock a.m. Court duly admonished the Jurors in the Box, remanded defendant to the custody of the United States Marshal, and continued cause until 2:00 o'clock p.m.

Roll of Jurors

Jessie Highsmith, Laurence Sandison, Esther H. Merly, Julia Simco, Charlotte L. Wells, Mrs. Carl J. Hamacker, David L. Crusey, Ernest Tyler, La Preil Stephan, R. E. Gibson, Aileen Curtis, Rica Swanson, Mrs. J. M. McDonald, Muriel McSparin, Jean E. Cartee, Helen Beauchamp, William Stolt, M. M. Myers, Esther Stoddard, Lyle A. Rilling, Haleen J. Ingalls, Daisy Heaven, Ethel R. Davies, Elisabeth Schneider, Letty F. Otto, Jean Reekie.

Trial Jury

Jean Reekie, Laurence Sandison, M. M. Myers, Julia Simco, Charlotte L. Wells, Muriel McSparin, David L. Crusey, Ernest Tyler, Lyle A. Rilling, Elisabeth Schneider, Letty F. Otto, Rica Swanson.

Now came the Jurors in the Box, who on being called each answered to his or her name, came the defendant in custody of the United States Marshal, came also the respective counsel, came also John Shaw, for and in behalf of the defendant, and the trial of cause No. 2818 Cr., entitled United States of America, Plaintiff, versus Theodore Roosevelt Glenn, Defendant, was resumed.

Whereupon the Deputy Clerk, under the direction of the Court, continued to draw from the Trial Jury Box, one at a time, the names of the members of the regular panel of Petit Jurors and respective counsel examined and exercised their challenges against said Jurors so drawn until both sides were satisfied and the Jury complete, consisting of the following named persons, to-wit:

1. Jean Reekie; 2. Laurence Sandison; 3. M. M. Myers; 4. Julia Simco; 5. Charlotte L. Wells; 6. Muriel McSparin; 7. David L. Crusey; 8. Ernest Tyler; 9. Lyle A. Rilling; 10. Elisabeth Schneider; 11. Letty F. Otto; 12. Rica Swanson, which said jury was duly sworn by the Deputy Clerk to well and truly try the matters at issue in the above-entitled cause and a true verdict render in accordance with the evidence and the instructions given by the Court.

At this time L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government moves Court that Count I of indictment be dismissed; motion dismissing Count I of indictment granted.

Opening statement to the Jury was had by L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government.

Opening statement to the Jury was had by Harold J. Butcher, for and in behalf of the defendant.

At 2:55 o'clock Court duly admonished the Trial Jury, remanded the defendant to the custody of the United States Marshal and continued cause to 3:05 o'clock p.m.

Now came the Trial Jury, who on being called, each answered to his or her name, came the defendant in custody of the United States Marshal, came also the respective counsel as heretofore and the trial of cause No. 2818 Cr., entitled United States of America, Plaintiff, versus Theodore Roosevelt Glenn, Defendant, was resumed.

At this time L. W. Kirkland, Assistant United States Attorney for and in behalf of the Government moves Court that all minors be excluded from the Courtroom.

Harold J. Butcher, for and in behalf of the defendant moves Court for exclusion of all witnesses until called upon to testify; motion denied.

Eva Nickita, being first duly sworn, testified for and in behalf of the Government.

Harold J. Butcher, for and in behalf of the defendant moves court jury be excused pending arguments on point of law; jury excused in recess for 10 minutes.

Argument to the Court was had by John Shaw, for and in behalf of the defendant.

At 4:10 o'clock p.m. Court continued cause to 4:15 o'clock p.m.

Now came the Trial Jury, upon being recalled, and each answered to his or her name, came the defendant in custody of the United States Marshal, came also the respective counsel as heretofore and the trial of cause No. 2818 Cr., entitled United States of America, Plaintiff, vs. Theodore Roosevelt Glenn, Defendant, was resumed.

Eva Nickita, heretofore sworn, resumed stand for further cross-examination for and in behalf of the defendant.

David C. Glascock, being first duly sworn, testified for and in behalf of the Government.

Upon motion of L. W. Kirkland, Assistant United States Attorney, jury excused for five minutes pending arguments on point of law.

Argument to the Court was had by L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government.

At 4:50 o'clock p.m. Court continued cause to 4:55 o'clock p.m.

Now came the Trial Jury, upon being recalled, and each answered to his or her name, came the defendant in custody of the United States Marshal, came also the respective counsel as heretofore and the trial of cause No. 2818 Cr., entitled United States of America, Plaintiff, versus Theodore Roosevelt Glenn, Defendant, was resumed.

David C. Glascock, heretofore sworn, resumed stand for cross-examination for and in behalf of the defendant.

At 5:06 o'clock p.m. Court duly admonished the Trial Jury, remanded the defendant to the custody of the United States Marshal and continued cause to 10:00 o'clock a.m. of Thursday, September 24, 1953.

Entered in Journal September 23, 1953.

Now came the Trial Jury, who on being called,

each answered to his or her name, came the defendant in custody of the United States Marshal, came also the respective counsel as heretofore and the trial of cause No. 2818 Cr., entitled United States of America, plaintiff, versus Theodore Roosevelt Glenn, defendant, was resumed.

Harold J. Butcher, for and in behalf of the defendant, moves Court for mistrial for reasons of the testimony of the witness David C. Glascock; motion denied.

Jack Jenkins, being first duly sworn, testified for and in behalf of the Government.

Government rests.

Harold J. Butcher, for and in behalf of the defendant, moves Court for directed verdict for and in behalf of the Defendant as to Count III of Indictment.

Jury excused pending arguments on point of law.

Argument to the Court was had by Harold J. Butcher, for and in behalf of the defendant.

Motion denied; Jury recalled.

Mrs. Charlotte Bryant, being first duly sworn, testified for and in behalf of the defendant.

Minnie Nelson, being first duly sworn, testified for and in behalf of the defendant.

Theodore Roosevelt Glenn, being first duly sworn, testified for and in his own behalf.

At 11:00 o'clock a.m. Court duly admonished the Trial Jury, remanded the defendant to the custody of the United States Marshal and continued cause to 11:10 o'clock a.m.

Now came the Trial Jury, who on being called, each answered to his or her name, came the defendant in custody of the United States Marshal, came also the respective counsel as heretofore and the trial of cause No. 2818 Cr., entitled United States of America, plaintiff, versus Theodore Roosevelt Glenn, defendant, was resumed.

Theodore Roosevelt Glenn, heretofore duly sworn, resumed stand for further testimony for and in his own behalf.

At 11:42 o'clock a.m. Court duly admonished the Trial Jury, remanded the defendant to the custody of the United States Marshal and continued cause to 1:45 o'clock p.m.

Now at this time came the Trial Jury, except for Juror Jean Reekie who is excused account of illness and upon the filing of a physician's certificate, and respective counsel having heretofore stipulated that the trial could proceed with less than 12 jurors, came the defendant in custody of the United States Marshal, came also the respective counsel as heretofore and the trial of cause No. 2818 Cr., entitled United States of America, Plaintiff, versus Theodore Roosevelt Glenn, Defendant, was resumed.

Ray Lancaster, being first duly sworn, testified for and in behalf of the defendant.

The defendant rests.

Jack Jenkins, heretofore sworn, resumed stand for further testimony for and in behalf of the Government.

Oscar Olson, being first duly sworn, testified for and in behalf of the Government.

David C. Glascock, heretofore sworn, resumed stand for further testimony for and in behalf of the Government.

The Government rests.

The Defendant rests.

Opening argument to the Jury was had by L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government.

Argument to the Jury was had by John Shaw, for and in behalf of the defendant.

Argument to the Jury was had by Harold J. Butcher, for and in behalf of the defendant.

Closing argument to the Jury was had by L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government.

Whereupon the Court read his instructions to the Trial Jury and Thomas Merton and C. J. McKinney were duly sworn by the Deputy Clerk as bailiffs in charge of said Jurors, and at 3:23 o'clock p.m. the Trial Jury retired in charge of their sworn bailiffs to deliberate upon their verdict, with instructions for a sealed verdict.

Entered in Journal September 24, 1953.

[Title of District Court and Cause.]

PROPOSED INSTRUCTION TO THE JURY
DEFINING THE CRIME OF SODOMY

When the crime of sodomy is committed, as alleged in Count III of the Indictment, upon the person of a human being, the crime against nature consists of the penetration of the anus of one person by the sexual organ of another. The jury, in order to convict the defendant of sodomy, must find from the evidence that the defendant, Theodore Roosevelt Glenn, did sometime during the month of November, 1950, insert his penis into the anus of Eva Nikita; otherwise, the defendant must be acquitted.

[Endorsed]: Filed September 24, 1953.

[Title of District Court and Cause.]

SUBPOENA DUCES TECUM

The President of the United States of America,
Greeting:

To: May Carter, United States Commissioner
Wasella Precinct:

You Are Hereby Required, That all and singular business and excuses being set aside, you appear and attend before the District Court, Territory of Alaska, Third Division, to be held in the Court Room of said court at Anchorage, in the Territory of Alaska, on the 24th day of September, A.D.,

1953, at 10:00 o'clock a.m., then and there to testify in the above-entitled cause, now pending in said Court, on the part of the defendant, and you are not to depart the Court without leave of the Court and you are to bring with you the death certificate of one Little Nickita and any other document pertaining to the death of the said Little Nickita which may be in your records, also any and all books of record which may be in your possession showing the registrations of births from 1933 to 1940.

And for failure to attend, as above required, you will be deemed guilty of contempt of Court, and liable to pay the party aggrieved all loss and damage sustained thereby.

Witness, The Honorable George W. Folta, Judge of the said District Court, Territory of Alaska, Third Division, and the seal of the said Court affixed this 23rd day of September, in the year of our Lord one thousand nine hundred and fifty-three and of the Independence of the United States the one hundred and seventy-eight.

[Seal]

M. E. S. BRUNELLE,
Clerk

/s/ By ADELIN STOSKOPF,
Deputy Clerk

Marshal's Return attached.

[Endorsed]: Filed September 25, 1953.

[Title of District Court and Cause.]

SUBPOENA

The President of the United States of America,
Greeting:

To: Emil Nelson, Minnie Nelson, Catherine Theodore, Dick Nikita, Robert Nickita, Nick Stephan:

You Are Hereby Required, That all and singular business and excuses being set aside, you appear and attend before the District Court, Territory of Alaska, Third Division, to be held in the Court Room of said court at Anchorage, in the Territory of Alaska, on the 24th day of September, A.D., 1953, at 10:00 o'clock a.m., then and there to testify in the above-entitled cause, now pending in said Court, on the part of the defendant, and you are not to depart the Court without leave of the Court. And for failure to attend, as above required, you will be deemed guilty of contempt of Court, and liable to pay the party aggrieved all loss and damage sustained thereby.

Witness, The Honorable George W. Folta, Judge of the said District Court, Territory of Alaska, Third Division, and the seal of the said Court affixed this 23rd day of September, in the year of our Lord one thousand nine hundred and fifty-three

and of the Independence of the United States the one hundred and seventy-eighth.

[Seal] M. E. S. BRUNELLE,
 Clerk
 /s/ ADELINE STOSKOPF,
 Deputy Clerk

Marshal's Return attached.

[Endorsed]: Filed September 25, 1953.

[Title of District Court and Cause.]

SUBPOENA

The President of the United States of America,
Greeting:

To: Jane Doe Bryant, Lazy Mountain Home, near
Palmer, Alaska:

You Are Hereby Required, That all and singular business and excuses being set aside, you appear and attend before the District Court, Territory of Alaska, Third Division, to be held in the Court Room of said court at Anchorage, in the Territory of Alaska, on the 24th day of September, A.D., 1953, at 10:00 o'clock a.m., then and there to testify in the above-entitled cause, now pending in said Court, on the part of the defendant, and you are not to depart the Court without leave of the Court, and you are to bring with you any and all records in possession of said Lazy Mountain Home pertaining to the entrance into said home and the presence

there of one Eva Nikita. And for failure to attend, as above required, you will be deemed guilty of contempt of Court, and liable to pay the party aggrieved all loss and damage sustained thereby.

Witness, The Honorable George W. Folta, Judge of the said District Court, Territory of Alaska, Third Division, and the seal of the said Court affixed this 23rd day of September, in the year of our Lord one thousand nine hundred and fifty-three and of the Independence of the United States the one hundred and seventy-eighth.

[Seal]

M. E. S. BRUNELLE,
Clerk

/s/ By ADELIN STOSKOPF,
Deputy Clerk

Marshal's Return attached.

[Endorsed]: Filed September 25, 1953.

[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY

No. 1

Ladies and Gentlemen of the Jury:

We have now reached the point in the trial of this case where it becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon the facts of this case.

You were accepted as jurors in reliance upon your answers to the questions asked you concerning

your qualifications. You are just as much bound by those answers now and until you are finally discharged from further consideration of this case as you were then. The oath taken by you obligates you to well and truly try this case and a true verdict render according to the law and the evidence, without allowing yourselves to be swayed by passion, sympathy, prejudice or like emotion.

It is not for you to say what the law is or should be regardless of any idea you may have in that respect. It is the exclusive province of the Court to declare the law in these instructions, and it is your duty as jurors to follow them in your deliberations and in arriving at a verdict.

On the other hand it is the exclusive province of the jury to declare the facts in the case, and your decision in that respect, as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore, probably the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts.

No. 2

Since the dismissal of Count I of the Indictment in this case, the remaining counts have been re-numbered for the purpose of this trial, Nos. I and II.

By Count I, the defendant is accused of the offense of unnatural carnal copulation by means of the mouth with Eva Nickita, and by Count II with the crime of sodomy upon Eva Nickita by means of

her anus. It is alleged that both offenses were committed in the month of November, 1950, at or near Palmer.

The law of Alaska defines these offenses as follows:

“That if any person shall commit sodomy, or the crime against nature, or shall have unnatural carnal copulation by means of the mouth, or otherwise, either with beast or mankind of either sex, such person, upon conviction thereof, shall be punished”.

Carnal copulation means sexual connection.

No. 3

If you find from the evidence beyond a reasonable doubt that at or about the time and place stated, the defendant had unnatural carnal copulation with Eva Nickita by placing his mouth upon her private parts for the purpose of gratifying passion, you should find him guilty under Count I. But if you do not so find or have a reasonable doubt thereof, you should acquit him under Count I.

Likewise, if you find from the evidence beyond a reasonable doubt that at or about the time and place alleged, the defendant inserted his penis into the anus of Eva Nickita, you should find him guilty of the crime charged in Count II. But if you do not so find or have a reasonable doubt thereof, you should acquit him under Count II.

No. 3½

In any criminal case previous good character of

the accused may be shown by evidence that his general reputation in the community in which he lived was good. General reputation consists of what the people of the community generally think or say of another and, hence, anyone who knows what the general reputation of a person is in the community in which he lives may testify thereto. But the testimony must be based not on what a few people say but on what people generally say. However, evidence that the general reputation of one accused of crime has never been discussed in the community in which he lives is also admissible on the theory that one whose general reputation has not been the subject of discussion may be presumed to bear a good reputation.

Evidence of good reputation is admitted not for the purpose of showing that the one accused did not commit the crime charged but for the purpose of showing the improbability that he would do so. It is for you to say whether the defendant's good general reputation in Palmer prior to the commission of the offense charged has been proved. If you find that it has, you may consider it along with all the other testimony and give it such weight as you think it entitled to, remembering that persons of good character may nevertheless commit crimes.

No. 4

The law presumes every person charged with crime to be innocent and, hence, the defendant is entitled to the benefit of this presumption until it has been overcome by evidence beyond a reasonable

doubt. This rule as to the presumption of innocence is a humane provision of the law intended to guard against the conviction of innocent persons, but it is not intended to prevent the conviction of any person who is in fact guilty or to aid the guilty to escape punishment.

No. 5

The burden of proving the offense charged beyond a reasonable doubt is on the prosecution. Whether this burden of proof is sustained is to be determined by you from all the evidence in the case, and not merely from the evidence introduced on behalf of the prosecution.

No. 6

A reasonable doubt is not just any vague, fanciful or imaginary doubt, but one that arises after a careful consideration of all the evidence or from a lack thereof. It is a doubt based on reason, and not on a bare possibility of innocence, or on sympathy or a desire to escape from an unpleasant duty. Everything relating to human affairs and depending on human testimony is open to some possible doubt, and this is true of guilt.

If after carefully analyzing, comparing and weighing all the evidence, you have a settled conviction or belief of defendant's guilt, amounting to a moral certainty, such as you would be willing to act upon in matters of the highest importance relating to your own affairs, then you have no reasonable doubt.

No. 7

Subject to the law as contained in these instructions you are the exclusive judges of the credibility of the witnesses and of the effect and value of the evidence. Evidence includes not only all the facts testified to or established by the exhibits, but also all reasonable inferences which may be deduced therefrom. What facts have been proved and what inferences may be deduced therefrom is for you to determine. The term "witnesses" as used in this instruction includes the defendant.

You are, however, instructed that your power of judging the effect of evidence is not arbitrary but is to be exercised by you with legal discretion and in subordination to the rules of evidence. Evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict and, therefore, if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party offering it, such evidence should be viewed with distrust.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds. This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice or from a desire to favor one side as against the other. It does mean

that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on opposing sides, and that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence. The direct evidence of one witness whom you find to be entitled to full credit is sufficient for the proof of any fact in this case.

In determining the credibility of witnesses and the weight to be given their testimony, you should decide what testimony is to be believed in the same way as you would decide whether to believe something told you out of court. You size up the witness in court in the same way as an informant out of court, observe his appearance and demeanor, note his intelligence, whether he is candid and fair or evasive, whether he has an interest in the outcome of the trial, what motive he may have for testifying as he did, the opportunity he had to observe or learn or remember the facts to which he testified, the probability or improbability of his testimony, his bias or prejudice against or inclination to favor either party, his character as shown by the evidence, the extent to which he is corroborated or contradicted and all the other facts and circumstances which shed light on his credibility and the weight of his testimony.

A witness may be impeached by evidence affecting his character for truth, honesty, or integrity, or by contradictory evidence. A witness may also be impeached by evidence that at other times he has made statements inconsistent with his present testi-

mony as to any matter material to this case; or by proof that he has been convicted of a crime. However, the impeachment of a witness does not necessarily mean that his testimony is completely deprived of value or that its value is destroyed in any degree. The effect, if any, of the impeachment upon the credibility of the witness is for you to determine. A witness wilfully false in one part of his testimony may be distrusted in other parts. Discrepancies in a witness' testimony or between his testimony and that of other witnesses, if any, do not necessarily mean that the witness should be discredited. Failure of or a mistaken recollection is a common experience. It is a fact, also that two persons witnessing an incident or a transaction rarely agree on the details especially with regard to time, distance, etc. You should not, therefore, be misled by discrepancies in unimportant matters or in testimony which is immaterial to the question of guilt or innocence. But a wilful falsehood always is a matter of importance and should be seriously considered. Whenever it is possible you will reconcile conflicting or inconsistent testimony, but where it is not possible to do so, you should apply the tests stated and give credence to that testimony which, under all the facts and circumstances of the case, appeals to you as the most worthy of belief.

You are not bound to believe something to be a fact merely because a witness has stated it to be a fact, but you are to determine the fact by applying the tests stated in this instruction. And where witnesses directly contradict each other on any ma-

terial matter, and are the only ones who have testified thereto, you are not to consider the evidence evenly balanced or such matter not proved but you should ask yourselves what motive the one had for testifying as he did, and what motive the other had for testifying to the opposite, and after applying the tests referred to and considering all the evidence, determine whom to believe.

Finally, you may, in determining any question, resort to the sound common sense and experience which you use in the ordinary affairs of life. Also, in addition to drawing inferences and conclusions from the evidence you may consider such matters of common knowledge as are not disputable.

No. 8

I also instruct you that you should not concern yourselves with the matter of punishment. That is the exclusive concern of the Court. You are not responsible for the consequences of your verdict but only for its truth so far as the truth is determinable by you. When you have arrived at a verdict in accordance with these instructions, you need not submit to any questioning as to how you reached your verdict or what occurred in the jury room except in a proper proceeding in this Court.

No. 9

Proof that any witness has been convicted of crime, may be taken into consideration in determining his credibility and the weight and value you will give to his testimony.

No. 10

The law makes the defendant in a criminal action a competent witness. *It* determining his credibility, you have a right to take into consideration the fact that he is the defendant and that his interest in the result of your verdict is usually greater than that of any other witness, and give his testimony, considered in connection with all the other evidence, such weight as you believe it entitled to.

No. 11

Jurors are impaneled for the purpose of agreeing upon a verdict, if they can conscientiously do so, so that there may be an end to litigation. In each case the verdict must be unanimous. But while the verdict should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference and discussion in the jury room. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion of the case at that moment. Nor is it intended that he should close his ears to the arguments of other jurors. The very object of the jury system is to secure unanimity by a comparison of the views of, and by discussion and argument among, the jurors, themselves. Hence, while no juror should yield a sincere conviction founded upon the evidence and the law as laid down in these instructions merely to agree with the jury, every juror, in considering the case with fellow jurors, should lay aside all undue pride and vanity of personal opinion and

listen, with a disposition to be convinced, to the opinions and arguments of the others and a desire to get at the truth in order that a just verdict, representing the judgment of the entire jury, may be reached.

Accordingly, no juror should hesitate to change the opinion he has entertained or expressed, if honestly convinced that such opinion is erroneous, even though in so doing he adopts the views and opinions of other jurors. But before a verdict of guilty can be rendered, each of you must be able to say, in answer to your individual conscience, that you have arrived at a settled conviction, based upon the law and the evidence of the case and nothing else, that the defendant is guilty.

No. 12

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and, therefore, you should not single out one particular instruction and consider it by itself.

Your duty is to determine the facts of the case from the evidence submitted, and to apply to these facts the law as given to you by the Court in these instructions. The Court does not, either in these instructions or otherwise, wish to indicate how you shall find the facts or what your verdict shall be, or to influence you in the exercise of your right and duty to determine for yourselves the effect of evidence you have heard or the credibility of witnesses.

No. 13

Upon retiring to your jury room you will select one of your number foreman, who will preside over your deliberations and be your spokesman in court.

You will take with you to the jury room these instructions and one form of verdict. If you find the defendant guilty, you will draw a line through the blank space before the word "guilty"; but, if you do not so find, you will write the word "not" in such blank space.

If you unanimously agree upon a verdict during business hours, that is between 9 a.m. and 5 p.m., you should have your foreman fill in, date and sign it and then return with your verdict immediately into open court, together with these instructions. If, however, you do not agree upon a verdict until after 5 p.m. one day and before 9 a.m. the following day, the verdict, after being similarly filled in, dated and signed, must be sealed in the envelope accompanying these instructions. The foreman will then keep it in his possession unopened and the jury may separate and go to their homes, but all of you must be in the jury box when the Court next convenes at 10 a.m. when the verdict will be received from you in the usual way.

If it becomes necessary during your deliberations to communicate with the Court, you may do so by having the bailiff deliver a written message but you must not in such message, or otherwise reveal to the Court or any person how the jury stands on the question of guilt or innocence.

Given at Anchorage, Alaska, this 24th day of September, 1953.

/s/ GEORGE W. FOLTA,
District Judge

[Endorsed]: Filed September 25, 1953.

[Title of District Court and Cause.]

TRIAL BY JURY CONTINUED

Now at 10:00 o'clock a.m. came the Trial Jury, in charge of their sworn bailiff, who, on being called, each answered to his or her own name, came L. W. Kirkland, Assistant United States Attorney, came also the defendant in custody of the United States Marshal, came the respective counsel as heretofore, and said Jury did present by and through their Foreman in open Court their verdict in cause No. 2818 Cr., entitled United States of America, Plaintiff, versus Theodore Roosevelt Glenn, Defendant, which is in words and figures as follows, to-wit:

Verdict

[Title of Cause.]

We, the Jury, duly impanelled and sworn to try the above entitled cause, find the defendant guilty as charged in Count I of the Indictment, and not guilty as charged in Count II of the Indictment.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

/s/ David L. Crusey, Foreman

[Endorsed]: Filed September 25, 1953.

which verdict the Court ordered filed and the Jury was excused indefinitely and upon notice of 10 days, and defendant remanded to custody of the United States Marshal.

Entered in Journal September 25, 1953.

[Title of District Court and Cause.]

**M. O. SETTING TIME FOR PRONOUNCING
SENTENCE**

Now at this time upon the Court's own motion,

It Is Ordered that time for pronouncing sentence in cause No. 2818 Cr., entitled United States of America, Plaintiff, versus Theodore Roosevelt Glenn, Defendant, be, and it is hereby set for 10:00 o'clock a.m. of Saturday, September 26, 1953.

Entered in Journal September 25, 1953.

[Title of District Court and Cause.]

M. O. PRONOUNCING SENTENCE

Now at this time came L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government, came also the defendant, in custody of the United States Marshal, and with Harold J. Butcher, of his counsel, and this being the time heretofore set for pronouncement of sentence in cause No. 2818 Cr., entitled United States of America, plaintiff, versus Theodore Roosevelt Glenn, defendant, the following proceedings were had, to-wit:

Statement to the Court was had by L. W. Kirkland, Assistant United States Attorney, for and in behalf of the Government.

Statement to the Court was had by Harold J. Butcher, for and in behalf of the defendant.

The Court now pronounces judgment of three and one-half years in whichever institution may be designated by the Attorney General, against said defendant and directs the Assistant United States Attorney to prepare and submit written judgment and commitment in accordance with the oral judgment given herein, and defendant was remanded to the custody of the United States Marshal.

Entered in Journal September 26, 1953.

In the District Court for the Territory of Alaska,
Third Division

Criminal No. 2818

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THEODORE ROOSEVELT GLENN,

Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 26th day of September, 1953, came Lynn W. Kirkland, Assistant United States Attorney, the attorney for the government, and the defendant, Theodore Roosevelt Glenn, appeared in person and by his counsel, Harold J. Butcher, Esquire, and John Shaw, Esquire.

It Is Adjudged that the defendant, Theodore Roosevelt Glenn, has been convicted upon his plea of not guilty and a verdict of guilty of the offense of sodomy as charged in Count II of the Indictment on file herein; and the Court having asked the defendant, Theodore Roosevelt Glenn, whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant, Theodore

Roosevelt Glenn, is hereby committed to the custody of the Attorney General or his authorized representative for a period of Three and One-Half (3 $\frac{1}{2}$) years, said sentence to commence and begin on the 26th day of September, 1953, and that said defendant stand committed until said sentence is served.

It Is Ordered that the Clerk deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Done in open Court at Anchorage, Alaska, this 26th day of September, 1953.

/s/ GEORGE W. FOLTA,
District Judge

Acknowledgment of Service attached.

[Endorsed]: Filed September 26, 1953.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

The above named defendant moves the Court to grant him a new trial for the following reasons:

(1) That the Court erred in denying the defendant's Motion for Acquittal, made at the time the government rested its case.

(2) That the verdict is contrary to the weight of the evidence.

(3) That the verdict is not supported by sub-

stantial evidence, and the testimony of the complaining witness is not corroborated.

(4) That the Court erred in refusing to allow the defendant to cross-examine the complaining witness on incidents of previous unchastity with other persons.

(5) That the Court erred in refusing to permit the defendant to cross-examine the complaining witness as to previous false statements made to the Grand Jury and other persons regarding her age.

(6) That the Court erred in permitting the witness, Glasscock, to testify of other offenses occurring since the defendant was indicted.

(7) That the Court erred in permitting the District Attorney to elicit from the witness, Glasscock, in the presence of the jury, reference to the crime of "murder", on which the defendant has been previously indicted and on which he has not stood trial.

(8) That the Court erred in denying defendant's motion for a mis-trial.

(9) That the Court erred in instructing the jury as charged in Instruction No. IV.

(10) That the Court erred in permitting the prosecuting attorney, in his closing argument, to refer to other offenses not in evidence.

Dated at Anchorage, Alaska, this 29th day of September, 1953.

/s/ HAROLD J. BUTCHER,
Attorney for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed September 29, 1953.

[Title of District Court and Cause.]

M. O. DENYING MOTION FOR NEW TRIAL

Now at this time upon oral motion of Harold J. Butcher, counsel for defendant in cause No. 2818 Cr., entitled United States of America, Plaintiff, versus Theodore Roosevelt Glenn, Defendant, and with Lynn Kirkland, Assistant United States Attorney consenting thereto, motion for new trial submitted to the Court without argument.

Whereupon the Court denied motion for new trial in the above entitled cause.

Entered in Journal December 4, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Theodore Roosevelt Glenn, Appellant, was convicted, by verdict of jury impaneled to hear said case, on Count number two of the Indictment, and was thereafter, on the 26th day of September, 1953, sentenced to serve a term of three and one-half years on said judgment of conviction.

Said appellant was removed, without notice to his attorney, from the Federal Jail in Anchorage, Alaska, where he had elected to remain pending appeal, to the United States Jail at Seattle, Washington, and thereafter removed to the United States Prison at Leavenworth, Kansas, where appellant is now located.

Wherefore: I, Harold J. Butcher, one of the attorneys for said appellant, hereby appeal on behalf of said appellant to the United States Court of Appeals for the Ninth Circuit, from the above stated judgment.

Dated at Anchorage, Alaska, this 7th day of December, 1953.

/s/ HAROLD J. BUTCHER,

One of Attorneys for the Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed December 7, 1953.

[Title of District Court and Cause.]

MOTION

Comes now Harold J. Butcher, one of the attorneys for Theodore Roosevelt Glenn and, pursuant to Rule No. 40, Federal Rules of Criminal Procedure, moves this Honorable Court to extend the time for docketing the record in the appeal of the above named appellant for thirty days.

This motion is based upon the Affidavit of the undersigned and other documents and papers filed herein.

Dated at Anchorage, Alaska, this 18th day of January, 1954.

/s/ HAROLD J. BUTCHER,

One of Attorneys for Defendant.

[Endorsed]: Filed January 18, 1954.

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Territory of Alaska—ss.

Harold J. Butcher, being first duly sworn, upon oath deposes and says:

That he is one of the attorneys for Theodore Roosevelt Glenn, the above named defendant; that, on or about the 7th day of December, 1953, he filed a Notice of Appeal in the above captioned case and within the ten-day period allowed under the Federal Rules of Criminal Procedure; and that thereafter he was unable to order the transcript of record of the trial proceedings, for the reason that the appellant was confined to the United States Prison at Leavenworth, Kansas, and that the matter of sufficient monies necessary to pay the cost of such transcript and have the same prepared was uncertain; and that, thereafter when the undersigned was able to arrange for sufficient funds for payment of said transcript, he ordered said transcript, which transcript was not delivered until a few days prior to the date on which said record was required to be docketed in the United States Court of Appeals for the Ninth Circuit on appeal.

Affiant further states that, in accordance with the provisions of Rule 39-c, he had until midnight of the 16th day of January, 1954, to mail said transcript of record for docketing purposes to the United States Court of Appeals but was unable,

because of the delay in the receipt of the transcript, to have the same sufficiently preparing for docketing, and for the further reason that the Court was not in session on the 16th day of January, it being Saturday, and he was unable to appear in open Court to seek an extension of time sufficient to file and docket the case by midnight of Saturday, January 16, 1954.

For the foregoing reasons and on the ground of excusable negligence, it is respectfully requested that the Court grant the extension of time requested in the motion filed by the undersigned, and issue the order submitted herewith.

Dated at Anchorage, Alaska, this 18th day of January, 1954.

/s/ HAROLD J. BUTCHER,
One of Attorneys for Theodore
R. Glenn

Subscribed and Sworn to before me this 18th day of January, 1954.

[Seal] /s/ VIOLA G. GREEN,
Notary Public in and for Alaska. My commission
expires 8-29-56.

[Endorsed]: Filed January 18, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET THE RECORD ON APPEAL

Upon consideration of the motion of one of the attorneys for appellant for an order extending time to file and docket the record on appeal in the United States Court of Appeals for the Ninth Circuit, and good cause therefor appearing;

It Is Hereby Ordered that the time in which the appellant may file and docket the record on appeal in the United States Court of Appeals for the Ninth Circuit be and it is hereby extended to and including the 17th day of February, 1954.

Dated at Anchorage, Alaska, this 18th day of January, 1954.

/s/ JOHN CORREY, JR.,
District Judge

[Endorsed]: Filed January 18, 1954.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Pursuant to Rule 75 of the Rules of Civil Procedure as applicable in appeals from conviction under Federal Rules of Criminal Procedure, the defendant-appellant hereby designates for the record on appeal the entire record from the Indict-

ment to the Judgment of Conviction and Sentence, including the transcript of the trial proceedings, copy of which is attached hereto.

/s/ HAROLD J. BUTCHER,

Attorney for Defendant-Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed February 5, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Wm. A. Hilton, Clerk of the above entitled Court do hereby certify that pursuant to the provisions of Rule 11 (1) of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with the above entitled action or proceedings, and including specifically the complete record and file of such action, and including the bill of exceptions setting forth all the testimony taken at the trial of the cause, such record being the complete record of the cause pursuant to the said designation.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above entitled cause by the above entitled Court on September 26, 1953 to the United

States Court of Appeals at San Francisco, California.

[Seal] /s/ WM. A. HILTON,
Clerk of the District Court for the Territory of
Alaska, Third Division.

In the District Court for the District of Alaska,
Third Division

Criminal No. 2818

UNITED STATES OF AMERICA,
Plaintiff,
vs.

THEODORE ROOSEVELT GLENN,
Defendant.

TRANSCRIPT OF PROCEEDINGS

Anchorage, Alaska, Sept. 23, 1953, 11 a.m.

Before: The Honorable George W. Folta, U. S.
District Judge.

Appearances: For the Plaintiff: Seaborn J.
Buckalew, United States Attorney, Lynn W. Kirk-
land, Assistant United States Attorney, Third Di-
vision, Territory of Alaska. For the Defendant:
Theodore Roosevelt Glenn, Defendant in person,
and Harold J. Butcher and John Shaw, Attorneys
for Defendant. [1*]

* Page numbering appearing at the top of page of original Re-
porter's Transcript of Record.

The Court: I assume the parties are ready in this case?

Mr. Kirkland: The Government is prepared.

The Court: You may proceed.

Mr. Butcher: The defendant is ready but I have a couple of matters I wish to get into the record, your honor. We have been under the difficulty of attempting to ascertain when this case would go on from day to day and, therefore, our subpoenaing of witnesses has been based on our own estimation and such information as we could glean from the court as to when this case would go on. We checked yesterday, both with the secretary and the lawyers who were engaged in the previous trial, and it was believed by them and also by Miss Jensen that this case would be argued—the case just past—would be argued this morning and we would get to our case this afternoon. Assuming then that the drawing of the jury panel and at least the presentation of the case would consume the afternoon we have subpoenaed approximately seven witnesses for tomorrow morning. Mr. Kirkland now tells me that he has only two witnesses he intends to call and I had previously understood that he had approximately five. So, therefore, it may be that we will not have our witnesses available this afternoon, through no fault of our own, but we will proceed as far as we can and the Government can go ahead with its case. But it may be this afternoon if the [4] Government rests, we will be without a witness.

Our witnesses, I might say, your honor, are natives—all of them with two exceptions who are to

be brought in on technical proof only—they are natives whom we have had considerable difficulty with through the use of liquor and it was impossible to bring them into town from day to day pending the commencement of this case. We have had to do the best we could under the circumstances and determine when to subpoena them. It was our best judgment that tomorrow morning was the logical time.

The Court: I do not know how you received that information out of my office because I told my secretary that we would be at this case by 10:00 o'clock this morning. I told her that yesterday.

Mr. Butcher: I talked to your secretary yesterday in the presence of Louise, the Clerk. She estimated it would be—probably be noon. That was at two or three o'clock.

The Court: Well, we will proceed and see how we get along.

Mr. Butcher: I have another matter. I have just examined the list of jurors and out of a list of 33 jurors I find that there are six or seven—I am not sure of the number because in some cases I am not sure of the female name—there are six or seven men out of a panel of 33. Now, this particular case in my own opinion as a practicing lawyer is a case in which [5] the evidence will be of such a nature that if it were possible I would like to have it tried by male, all male jury. That being impossible I believe the defendant is entitled to have at least an equal number of men on the panel as women from which to draw a jury. Now, I understand, your honor, I believe that women make fine jurors but

I also believe that certain sordid things that might come out in evidence shock a woman more than they do a man. In our christian way of life and the rearing of our women they are more shocked and more sensitive to things pertaining to sex and other sordid types of conduct than a man is and I wish to, for the record, make an objection to the panel on the grounds that the number of women on the panel greatly outnumber the men and that it is not a good panel or a proper panel from which to draw a fair and impartial jury.

The Court: Well, I do not think you are entitled to have anybody on the jury that is particularly hardened but I do not think there is any question but that it may be doubted to be a representative cross section of the community. But that is a condition of living up here that you cannot get men jurors.

Mr. Butcher: Your honor, when the names are drawn ordinarily to subpoena the panel we used to get about the same number of men as we would women; that is the law of averages. In this case I am wondering if men have not been excused from the panel due to reasons that have appeared logical to the court [6] previously, so that we now have a panel composed almost entirely of women.

The Court: Well, I do not know what has been done heretofore. I have very sparingly excused men from the jury but I am not going to compel them to lose \$20.00 or \$25.00 a day by serving on the jury when they have fixed obligations they must meet. It is just a case where the Government does

not pay enough to enable the court to compel men to serve at such a sacrifice.

Mr. Butcher: It is part of their civic duty, your honor, regardless of sacrifice.

The Court: A person cannot live on civic duty. It simply would be very unfair to compel a person, as I say, who has fixed obligations. It is a typical story the court hears all the time. I have to meet payments of \$200.00 a month on my house; I have to meet payments of so much on my car and I have so many children and I cannot live on \$7.00 a day. So the court is not going to compel them to serve under those circumstances.

The Court: You may proceed to impanel the jury.

Whereupon, the Deputy Clerk proceeded to draw from the trial jury box, one at a time, the names of the members of the regular jury panel of petit jurors and counsel for both plaintiff and defendant examined and exercised their challenges against said [7] jurors, until the jury of twelve jurors was complete, and counsel for plaintiff and counsel for defendant stipulated that a verdict of less than twelve jurors may be received in case of illness, disability, or other good cause for excusing one of the jurors and that it is, therefore, unnecessary to draw the names of alternate jurors in the cause. Whereupon said jury was duly sworn to well and truly try the cause and a true verdict render in accordance with the evidence and the instructions of the court.

(Before completion of the examination of the

trial jury and before the challenges were exercised by counsel for the parties, the court recessed at 11:47 o'clock a.m., September 23, 1953, first duly admonished the trial jury and the panel, and reconvened at 2:05 o'clock p.m., September 23, 1953, at which time, counsel for plaintiff being present and defendant being present in person and by his counsel, the selection of the trial jury continued and was completed, as above indicated, and thereupon the trial of said cause was resumed:)

The Court: You may make your opening statement.

Mr. Kirkland: If the court please, I would like to make a motion as to Count I of this indictment. I do not think it would be necessary to exclude the jury because I do not see how the defendant could be prejudiced by it. [8]

The Court: Well, it is never improper to make a motion in the presence of the jury if you do not argue it.

Mr. Kirkland: Your honor, I move that Count I of the indictment——

Mr. Butcher: Your honor, I may decide to argue it. I do not know. What is the motion?

The Court: We can pass on it then, if you decide to argue.

Mr. Kirkland: I move to dismiss Count I, that charges the crime of statutory rape for the reason that my witness in this case, after making a closer check of what few records we have, the Native Service records show that this witness was born in 1933. This witness at the time she discussed this

case with me thought she was born in 1935. She was confused with her brother's birthday. She now, after checking with her family—what family she has and people that have known her—has ascertained that she was born in 1934 and she would be a few months above the statutory age.

The Court: The count will be dismissed, leaving the second and third counts. You may make your opening statement.

Opening statement to the jury was made by Mr. Lynn W. Kirkland, Assistant United States Attorney, on behalf of the plaintiff.

Mr. Butcher: Your honor, before I make my opening [9] statement I want to call attention to the fact that the District Attorney's motion has caught us completely by surprise. We had no indication whatever that he intended to make it and I am sure that he had previously decided to make such a motion and has now put us or defendant to a great and considerable expense of subpoenaing a group of natives in to the court from Eklutna who all are fully aware of the girl's age at the time this alleged offense was supposed to have occurred. I think the Government has been derelict in informing counsel on the other side of their disinclination to go ahead with this particular charge.

The Court: It seems to be a common occurrence. I agree with you that the moment that a party to any litigation discovers that there will be a change of that kind made every one should be apprised but, as I say, that is a common occurrence, particularly in this court. There have been times we

would all be in court and the jury here and the cause could have been settled out of court and there is just another \$400 or \$500 in jury fees wasted.

Mr. Kirkland: If it please the court, I only learned of this this morning and I informed counsel for the defendant in the hall before we came in to seelet this jury. There is some error there.

Mr. Butcher: Counsel informed me that he did not think he could make the first count stick. He thought he could not [10] make a case out of it. He did not say he was going to dismiss. I asked him if he was interested in dismissing it. On certain considerations I might be willing to concede and he was not and that was the last word we had on the subject.

Mr. Kirkland: I think this is pointless going on. I told counsel I certainly would not dismiss counts II and III. I told him I had learned of the age and he said, yes, he had the witnesses who would testify that this girl was over the age of 16 and it was very clear, in my opinion.

The Court: I do not see any reason for further argument in the absence of any statute that would give the right to the other party to accumulate costs and in any event the costs could not be assessed against the United States.

Mr. Butcher: That is perfectly true, your honor. The only thing I wanted to say is that by the slightest effort and slightest examination— by going to the source where the girl resided, where she lived—all this could have been found without the slightest trouble, which we were able to find out with

hardly any effort. I will proceed with the opening statement.

Opening statement to the jury was made by Mr. Harold J. Butcher on behalf of the defendant.

The Court: The court will be in recess for ten minutes. [11]

(After a short recess court re-convenes and the following proceedings were had:)

Mr. Kirkland: May it please the court, before we proceed any further I would like to ask that all minors be excluded from the courtroom during the hearing of this case other than the witnesses.

The Court: Owing to the nature of the case all minors will be excluded from the courtroom. The bailiff and the United States Marshal will see that this order is carried out.

Now, as I understand it, you only have two witnesses?

Mr. Kirkland: That is correct, possibly a third. I am not sure—two for my case unless there is rebuttal to come up.

The Court: Well, it may be that it will take the rest of the day and, therefore, you will have your witnesses on time anyhow.

Mr. Butcher: Yes, thank you, your honor.

Mr. Kirkland: If it doesn't I have other criminal matters I would gladly like to bring before the court.

The Court: Well, the court does not like business. You may call your first witness.

Mr. Butcher: Your honor, I have a motion to make prior to the calling of the first witness. I

move that the court exclude from the courtroom at this time all persons who may testify or intend to testify in this case. My reason for [12] making this motion is that I think it is most unfair to this defendant or any other defendant to take the stand after witness after witness gets on the stand and tells their story so that all those within the hearing of the story can thus amplify their story and the story they tell is sometimes not their own. I have a most eminent authority on the subject, your honor, if you care to have it cited.

The Court: No need to; the motion is denied.

Mr. Kirkland: It makes no difference; my other witness is in my office with the Marshal.

Mr. Butcher: May I, for the record, cite the authority?

The Court: No, I have gone into it myself and I am satisfied it is within the discretion of the court.

Mr. Butcher: Would your honor hear a very brief three or four lines subject on the matter?

The Court: No.

Mr. Butcher: May I pass the book to your honor?

The Court: You may do that and I will read it some other time.

Mr. Butcher: May I take exception, your honor?

The Court: Proceed.

Mr. Kirkland: I would like to call Eva Nickita.

EVA NICKITA

called as a witness on behalf of the plaintiff, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Kirkland:

Q. Will you state your name, please?

A. My name is Eva Nickita.

Mr. Butcher: Cannot hear the witness, your honor.

Q. Where do you live, Eva; where do you reside? A. Palmer, Alaska.

Mr. Butcher: Your honor, I am unable to hear the witness from here.

The Court: You will have to speak louder and if you find it difficult to speak louder, you can just speak into the microphone. It will have to be one or the other.

Q. Where did you live during 1950, Miss Nickita, during the winter months of 1950?

A. I lived at Eklutna.

Q. And were you living at Eklutna during the month of November, 1950?

A. No, I lived at Glenn's house in winter of 1950.

Q. I beg your pardon, please?

A. I live at Glenn's house in November of 1950.

Q. At Ted Glenn's house during November of 1950?

The Court: You should refer to him as the defendant [14] and there won't be any confusion.

Q. At the defendant's house in 1950?

(Testimony of Eva Nickita.)

Mr. Butcher: Your honor, to refer to the defendant and to the house as the defendant's would be to lead the witness. The right is for her to tell her own story and tell where she lived, not to be led by suggestions from counsel and I would suggest to him he is leading the witness.

The Court: You should object when the leading question is asked; no question before the court.

Mr. Butcher: I thought your honor suggested.

The Court: I suggested for future guidance. It is improper at any time to call any of the parties by name here.

Q. (By Mr. Kirkland): Miss Nickita, do you know the gentleman who is sitting at the end table over there in the dark suit? A. Yes.

Q. And what is that gentleman's name?

A. Ted Glenn.

Q. When did you first see Mr. Glenn?

A. In 1950 at Eklutna.

Q. In 1950 at Eklutna? A. Yes.

Q. Now, will you tell the court and jury what took place when you first met Mr. Glenn?

A. Well, Charlie Rosseau and Ted came there at Eklutna about midnight at night and they came over to my aunt's house. [15]

The Court: You better put that microphone within about that distance (indicating 3 inches) of your mouth and speak into it.

Mr. Kirkland: Excuse me, your honor, might I approach the witness and lower the microphone?

The Court: Yes.

(Testimony of Eva Nickita.)

Mr. Kirkland: Probably be easier for her.
(Thereupon the microphone was lowered.)

Q. (By Mr. Kirkland): Miss Nickita, I will ask you to repeat these questions, someone might not have been able to have heard your answers. Now, when did you say the first time you met Mr. Glenn was? A. In 1950 at Eklutna.

Q. And under what circumstances did you meet Mr. Glenn? A. Circumstances?

Q. Yes. In other words, I mean what took place when you first met him?

A. Mrs. and Mrs. Charlie Rosseau was there; they came there and——

Q. Excuse me, Miss Nickita, just where did they come?

A. They come from Palmer and Matanuska.

Q. And where did they go to? To your house?

A. No, at my aunt's house.

Q. And what took place after they arrived?

A. They came there and they got me. [16]

Q. Now, what do you mean by saying they got you?

A. I mean they took me back to Palmer.

Q. And now, did you want to go to Palmer?

A. No, I didn't.

Q. Did you say anything? A. No.

Q. Did you do anything?

A. They got me out of the bed and they told me to go in car with them.

Q. And whose home was this that this all took place in? A. Minnie's place.

(Testimony of Eva Nickita.)

Q. Minnie who? A. Minnie is my aunt.

Q. Your aunt. Now——

The Court: I think you better take that microphone and put it in your lap. You do not get close enough to it there. It may be too low now. (The microphone was put in the witness' lap.)

Q. (By Mr. Kirkland): Did you want to get in the car? A. No, I didn't.

Q. Did you say anything about it?

A. I said I didn't want to go.

Mr. Butcher: Your honor, I wish to interpose objections to leading questions; asking her if she wanted to get in the car is a leading question. Counsel's duty is to ask her [17] what she did and what was said, not to invite her to specify things by leading her and I object to it.

The Court: I think these are preliminary matters. Objection overruled.

Mr. Butcher: These are the very heart of the matter, that this girl was taken without consent. Did you go willingly is certainly the heart of the matter.

The Court: No charge that she was taken anywhere without consent.

Mr. Butcher: Well, then, the question is immaterial and irrelevant.

The Court: If it is preliminary, and I assume it is preliminary, why, it is not immaterial nor irrelevant. It cannot be objected to on that ground.

Mr. Kirkland: It is preliminary, your honor.

(Testimony of Eva Nickita.)

Q. (By Mr. Kirkland): Now, after you got in the car where did you go?

A. Back to Palmer.

Q. Now, who was in the car?

A. Who was in the car?

Q. Yes.

A. There was Gronia Rosseau and her husband and Minnie and Ted and I.

Q. And where did you go in the car?

A. Went back to Palmer. [18]

Q. And where did you go in Palmer?

A. Took the Rosseaus back to Matanuska and back to Ted's house.

Q. Who went to Ted's house?

A. Just me.

Q. And you are referring to the defendant in this case. Now, what took place when you arrived at the defendant's house?

A. Well, from—we just get in there and got in bed.

Q. How did this—is that the first thing you did when you went in the house? A. Yes.

Q. Did you want to?

Mr. Butcher: Now, your honor, I object to that as immaterial, irrelevant and it is not preliminary, nothing to do with the issues in this case.

The Court: Objection overruled.

Mr. Butcher: Exception.

Q. (By Mr. Kirkland): What did you say? What was your conversation with the defendant when you got in the house?

(Testimony of Eva Nickita.)

A. Well, I—what do you mean by conversation?

Q. What did you talk about? In other words, when you got out of the car and got there?

A. I started to cry. I said I didn't want to go.

Q. And what did the defendant do?

A. Well, he got in bed with me. [19]

Q. Well, and what happened when you got in bed?

A. Well, he started something bad.

Q. And now what do you mean by "something bad"?

A. Well, he started—I don't know what they call it—anyway but—

Q. Well, can you describe what the defendant did?

A. Yes, well he got on top of me to start something.

Q. And what did you say? That he got on top of you? A. Yes.

Q. Now, what did the defendant do when he wasn't—when he got off of top of you?

A. I don't know how to explain that.

Q. Well, what was the conversation? In other words, what did you talk about? What did he say to you? In other words, after he got off of you.

A. After he got off?

Q. Yes. A. He went to sleep.

Q. Well, now before he got off the top of you, to make this clearer did—Now, will you describe it? Just tell the court and jury what the defend-

(Testimony of Eva Nickita.)

ant did do. In other words, he was on top of you. Then what position did you get into?

A. Well——

Mr. Butcher: Your honor, I object to that question on the ground that it assumes something that has not been [20] testified to. She has been asked what he did and she has told that he got on top of her and that he went to sleep and counsel is saying: what other position he got into.

Mr. Kirkland: I think this witness would certainly—I would be allowed to ask leading questions of this witness now, which I have refrained from doing.

The Court: I do not remember now what the question was. You better ask it again or go on with the examination.

Q. (By Mr. Kirkland): Will you describe exactly what the defendant——

The Court: You use the word “describe”. She may not know the meaning of “describe”. You better use simpler language than that. Ask her to tell.

Q. (By Mr. Kirkland): Will you tell what the defendant did to you? A. Say again.

Q. Will you tell what the defendant did in the bedroom?

A. Well, he did something that—I don’t know how to explain that.

Q. Will you tell just what happened.

A. Well, he got on top of me and——

Q. Did he do anything while he was on top of you? A. Yes.

(Testimony of Eva Nickita.)

Q. What did he do while he was on top of you?

A. Well, I'll say he did something that— [21]

Q. Did he touch your privates?

Mr. Butcher: Now, your honor, I object to that question. This witness has not shown that she does not know what happened or that she is incapable of expressing herself. She is only showing her reluctance to tell about something that is embarrassing. That is no basis for counsel guiding her as he is doing.

The Court: You may ask leading questions. She is reluctant and that is enough.

Mr. Butcher: And I take exception.

Q. (By Mr. Kirkland): Did the defendant touch your personals, your privates? A. Yes.

Q. And what did he touch your privates with?

A. I don't understand what you mean.

Q. In other words, what did he touch your—I believe you referred to as a—personal? What did he touch your personal with? His hand?

A. No.

Q. His privates? A. No.

Mr. Shaw: If the court please, the witness has just indicated that she did not know the meaning of the word "privates". He is pressing her on that point.

The Court: I think the language is beyond her [22] comprehension.

Mr. Shaw: I wish to object to leading questions.

The Court: You apparently interviewed her before, why don't you use the same language?

(Testimony of Eva Nickita.)

Mr. Kirkland: I am, your honor. "Personal" was her own expression for the word.

Mr. Butcher: Maybe, your honor, counsel is afraid to use those words.

The Court: This is not a place to shrink from using plain language.

Q. (By Mr. Kirkland): Miss Nickita, did the defendant put his mouth on your privates?

A. Oh, yes.

Q. Between your legs? A. Yes.

Q. Now, tell what happened then?

A. Then he did that to me on the back.

Q. He did what? A. On the back.

Q. Now, what do you mean on back?

A. Well——

Mr. Shaw: If it please the court, I cannot hear the witness at this distance and I am wondering if the jury can hear the answers, especially this gentleman that is hard of hearing. It is impossible for me to catch the answers at this [23] distance.

The Court: Mrs. Brewington (the bailiff), will you extend this microphone for her to get it up higher. She apparently lets it drop. I think you will have to raise it, elevate it. Can it be tightened?

The Bailiff: It can but it is going take time, I guess.

The Court: I think the system is obsolete.

(The bailiff tried adjusting both microphones and there was some more discussion had about the system and what could be done.)

Q. (By Mr. Kirkland): Miss Nickita, where did

(Testimony of Eva Nickita.)

the defendant put his mouth? A. Put what?

Q. His mouth? A. Oh.

Q. Where?

A. Oh. (Long pause.) He put it on down there.

Q. What do you mean by down there?

A. He put it.

Q. Where you wee-wee? A. Yes.

Q. How long did he stay that way?

A. Well——

Q. How long? Five minutes, ten minutes, one minute? [24] A. No, about ten minutes.

Q. And what would he do with his mouth there?

Did you feel his tongue? A. Yes.

Q. Did he hold his tongue still?

A. No, moved it around.

Q. Moved it around? A. Yes.

Q. Now, after that then what happened?

A. After what?

Q. After his mouth, then what happened after he put his mouth and tongue there, then what happened?

A. Well, after he did all those things he went to sleep.

Q. Now, wait a minute, what are all the things that took place? Now, you have told us of the mouth and about him getting on top of you, now was there anything else? A. Yes.

Q. And what was that?

A. He did that on the back of me.

Q. Now, what do you mean on the back?

A. I don't know what you call that.

(Testimony of Eva Nickita.)

Q. Did he put his thing somewhere in the back?

A. Yes.

Mr. Butcher: Now, your honor, I do not believe that is explicit enough. I do not know whether he is talking about [25] his tongue or something else.

The Court: It is true it is not explicit enough but he has not quite finished his examination yet.

Mr. Butcher: Well, I think that the word "thing" should be further defined so that we know—I know and the jury knows—the answer the witness has made.

The Court: It should be.

Mr. Kirkland: Now, by "thing" is that what he put in the front?

Mr. Butcher: Now, your honor, that question is so vague and ambiguous.

The Court: I do not think your questions are plain enough for a person of her intelligence.

Q. (By Mr. Kirkland): Did he put the thing he teed-teed with back there? A. Yes.

Q. And you know what he tees-tees with now, don't you?

Mr. Butcher: Now, your honor, I do not think that is at all clear. He called it "wee-wee" awhile ago.

Mr. Kirkland: I think counsel is dillydallying. I do not think any one in the courtroom or the jury or counsel himself knows what "it" means.

The Court: I do not think you should shirk from using plain language. You can use plain lan-

(Testimony of Eva Nickita.)

guage; the court has given you permission to ask leading questions of a specific [26] kind.

Q. (By Mr. Kirkland): Now, the thing that he put in the rear was that the thing that was between his legs hanging down?

The Court: She did not say rear; she may not know what that means. She used the term "back".

Q. (By Mr. Kirkland): Now, by "rear" what do you mean by that? Can you make that a little clearer?

A. I don't know what that means.

Mr. Butcher: As a matter of fact, your honor, she never used the word "rear".

The Court: No, I think she stuck to one term.

Mr. Kirkland: Your honor, I stick to one term and counsel wants me to change to other terms.

The Court: She used the word "back". Now, stick to that.

Q. (By Mr. Kirkland): What did you mean by "back"?

The Court: She does not have to explain what she means by "back". Everybody knows what that is. You will have to ask the question in a different form. If necessary have her stand up and point.

Q. (By Mr. Kirkland): Miss Nickita, will you please stand up. What do you mean by "back"? Will you point to what you mean by your "back"?

The Court: Turn around, turn your back to him.

Mr. Butcher: She may not mean—by "your back" your [27] honor is presuming she means something.

(Testimony of Eva Nickita.)

The Court: I cannot presume anything else but that she means "back" by back.

Mr. Butcher: Let her point it out.

The Court: Turn around and point it out. We have wasted enough time now.

Q. (By Mr. Kirkland): Will you point to what Mr. Glenn did on your back? Will you put your hand there?

A. I mean the side here.

Q. Will you turn around a little bit, right in there now. Did Mr. Glenn put anything in there?

A. Yes.

Q. And what did he put in there?

A. I don't know what they call that.

Q. But was it what he has between his legs?

A. Yes.

Q. What he tee-tees with? A. Yes.

Q. You can sit down now, Miss Nickita. How long did you remain at the Glenn—at the defendant's house?

A. About two weeks or three weeks.

Q. Where did you go when you left?

A. When I left I went back to Eklutna.

Mr. Shaw: If it please the court, I would like to request that she hold the microphone again. I am unable to hear. [28]

The Court: You better put the microphone in your lap with the book under it.

Q. (By Mr. Kirkland): Now, where did you go when you left the defendant's house?

A. Well, he took me back to Eklutna.

(Testimony of Eva Nickita.)

Q. And why did the defendant take you back?

A. Because I can't cook and I can't do the housekeeping so he took me back to Eklutna.

Q. Did you enjoy your stay at the Glenn residence, the defendant's house? Did you have a good time while you were there?

Mr. Butcher: I object to that question—nothing in the issues of this case.

The Court: Yes, objection sustained.

Mr. Kirkland: Your witness.

Cross Examination

By Mr. Butcher:

Q. Your name is Eva, is that correct? Eva Nickita? A. Yes.

Q. Eva, how old are you? A. 19.

Q. You are 19 years of age now. When did you learn you were 19 years of age? [29]

A. When did I learn it?

Q. Yes. Have you always known you were 19 years of age?

Mr. Kirkland: Your honor, I object to that as being immaterial.

The Court: Sustained.

Mr. Butcher: Your honor, I make an offer of proof. I can prove that this witness has previously told—not only told the district attorney but the grand jury that she was of another age and that she knew that other age all the time and that she did not tell the truth about it. Now, for the purpose of impeaching this witness' testimony—

(Testimony of Eva Nickita.)

Mr. Kirkland: I ask that counsel approach the bench or ask that the jury be excused.

The Court: The objection is sustained.

Mr. Butcher: For my own information, your honor, is the court ruling now that the fact that this witness told another story am I forbidden to bring it out?

The Court: It is immaterial.

Mr. Butcher: Even for the purpose of impeaching this witness?

The Court: I have ruled against it and that ought to be the end of it.

Mr. Butcher: Exception.

Q. (By Mr. Butcher): When you were living with your Aunt Minnie—her name is Minnie Nelson, is that not correct? [30]

A. Yes.

Q. And she lives at Eklutna?

A. Yes.

Q. In a cabin, is that correct?

A. Yes.

Q. That a one-room cabin?

A. Yes.

Q. A one-room cabin and Mr. Nelson—and that is her husband, Minnie's husband—and Minnie lived in this cabin and slept in the bed in the cabin?

A. Yes.

Q. And did you sleep in another bed in the same room?

A. Yes.

Q. Now, you have testified that Mr. Glenn, whom you call Teddy, came to your house one night sometime in November. Do you recall that you testified to that? Eva, do you remember that?

A. I was staying with my Aunt's house.

Q. And Mr. Glenn and two other men came to

(Testimony of Eva Nickita.)

the house? Mr. Glenn and two other men came in an automobile one night to the house?

A. No.

Q. What is that?

A. Charlie and Gronia came.

Q. Do you recognize the name of Charlie Rosseau? [31] A. Yes.

Q. Was he with Mr. Glenn? A. Yes.

Q. And was Mr. Kurtz—was he the other man with Mr. Glenn? A. I don't know him.

Q. Do you recognize the name Cecil?

A. Yes, he lived at the farm.

Q. He lives on the farm and his name is Cecil, is that right? A. Yes.

Q. And he was with Teddy, is that correct?

A. I think it was; I didn't see him.

Q. When they got to the cabin they came in the room where—

Mr. Kirkland: Wait a minute, your honor, I object. The witness said she thinks he did. I think counsel should establish she saw this witness.

The Court: I cannot anticipate what he is going to ask next so I cannot rule on it.

Mr. Butcher: She testified Mr. Glenn came with two men, as good as I could hear. She has recognized Charlie Rosseau and I asked her if she knew Cecil. She said he owned a farm in Palmer. There were three men that came to the house, is that not correct, Eva?

A. Yes, but I didn't see the other man.

Q. Did he stay out in the car?

(Testimony of Eva Nickita.)

A. I don't know. [32]

Q. But you did see Charlie Rosseau?

A. Yes.

Q. And you saw Teddy? A. Yes.

Q. And did you see anybody else?

A. Gronia Rosseau.

Q. Well, now, did these three men come in the house?

A. I saw two men in the house.

Q. And did they talk to Minnie? Did the men talk to Minnie? A. Yes.

Q. And did Minnie say anything to you?

A. Told me to go with the men.

Q. Told you to go with the men? A. Yes.

Q. And did you have a suitcase?

A. No, it was—my suitcase was down at my sister's.

Q. Did you go down and get your suitcase?

A. No, I didn't get that until later.

Q. Well, later that same night or some other time? A. Some other time.

Q. Did you have some clothes and things that you put in the suitcase?

A. No, not many clothes.

Q. But you did have some? A. Yes. [33]

Mr. Kirkland: Your honor, I want to object to this as being immaterial. I cannot see where it has any relation and it is entirely irrelevant to the charges for which the defendant is standing trial.

The Court: Yes, it would seem immaterial.

Mr. Butcher: It is highly material, your honor.

(Testimony of Eva Nickita.)

Counsel asked the girl if she went willingly. She said the men told her to go. Now she says the Aunt told her to go. If the cross examination is permitted it is permitted on the subject matter she testified on. I am asking her the questions and we are finding out some new facts. Am I forbidden to find out the new facts by his honor's ruling?

The Court: If getting the clothes would throw any light on whether she went willingly or unwillingly, there isn't any question but that it would be proper. But it just does not appear to be material. If you promise to show the materiality, you may go on with it.

Q. (By Mr. Butcher): You had a suitcase with you at Mr. Glenn's house, did you, Eva? A. Yes.

Q. But you didn't take it that night. It is your recollection that you did not get it that night; that he came to your house the first time?

A. Yes.

Q. And you got it some other time, is that right?

A. No. I think I got it that night.

Q. You got it that night? When you got out of bed and got dressed did you go down to your sister's house before you went with the men?

A. My sister's?

Q. Yes, where your suitcase was.

A. Yes, I think.

Q. And you got your suitcase? A. Yes.

Q. And then you went and got in the car with three men? A. What do you mean?

Q. Two men, Teddy and Charlie Rosseau, and

(Testimony of Eva Nickita.)

the other man whom you call Bruno Rosseau, is that right? A. What you call him?

Q. What do you call him? What did you call the other man? Bruno Rosseau? A. Yes.

Q. Yes, and you got in the car with them?

A. Yes.

Q. Now, did you say that Minnie also got in the car?

A. Yes, Minnie went to Palmer because I didn't want to go so she went with me.

Q. Minnie went to go with you? A. Yes.

Q. And when you got to Palmer did she get out? [35] A. She got out and left me.

Q. At Mr. Glenn's house or in Palmer?

A. In Palmer.

Q. And where did Mr. Rosseau go?

A. To come back to Matanuska.

Q. He what? A. Matanuska.

Q. He went over to Matanuska. Did you go with him at that time? A. Yes.

Q. And then you went with Mr. Glenn, is that right? A. Yes.

Q. Now, when you got to Mr. Glenn's house didn't you play some phonograph records he had on a phonograph he had there?

A. Phonograph?

Q. Yes. A. No.

Q. A record player, a radio, did you play the radio? A. The radio was on a—

Q. When you went to his house that first night, Eva, did you play the radio?

(Testimony of Eva Nickita.)

Mr. Kirkland: Your honor, I object to that as being immaterial and irrelevant; whether they played the radio or not has no bearing on the charges.

The Court: Objection is overruled. [36]

Q. (By Mr. Butcher): Did you play the radio, Eva, after you got to Mr. Glenn's house?

A. No, I don't think I play it; I think I was crying.

Q. Well, were you still crying when you got to Mr. Glenn's house? A. Yes.

Q. Now, when you went inside of Mr. Glenn's house, did you go to bed?

A. I didn't want to go to bed.

Q. Well, why did you go to bed then?

A. Because he asked me to go to bed with him.

Q. And then you went to bed with him?

A. Yes.

Q. Who got in bed first, do you remember?

A. Well, he asked me to get in bed first.

Q. And did you take the clothes off before you got in bed? A. Yes.

Q. All of them?

A. Yes, he asked me to take all my clothes off and get in bed and so I did.

Q. And you got in bed and whose bed did you get in? A. Glenn's bed.

Q. That was a double bed; was that a double bed? A. It was a kinda big bed.

Q. Were there any other beds in the house? [37]

(Testimony of Eva Nickita.)

A. No, I don't see any other beds except the big bed.

Q. During the three weeks that you stayed there did you see any other beds? A. No.

Q. Never saw any other beds? A. No.

Q. How many rooms were in the house, do you remember? A. A big house anyway.

Q. And lots of rooms? A. Yes.

Q. How soon after you arrived at the house did you take your clothes off and go to bed? Was it right away or did you have some food or something else? A. No, I didn't even eat.

Q. You didn't have anything to eat? Had you had anything to drink that night?

A. I drank whiskey with him.

Q. Had you had some whiskey before he came out there?

A. Before he came out there?

Q. Yes, at Minnie's house?

A. No, I was in bed then.

Q. Had you had any whiskey before you went to bed? A. No.

Q. Now, on this night, this first night—do you understand what I mean by intercourse? [38]

A. No.

Q. Do you understand what I mean by—is there a word that you know, Eva, that you use which means when a man puts his penis in your privates? Do you know what that word is? A. No.

Q. You don't know. Now, on this first night that you were there with Mr. Glenn, did he ever put his

(Testimony of Eva Nickita.)

penis in between your legs in your privates? Did he do that? A. Yes.

Q. He did. Now, did he do that first?

A. When we got in bed he did that.

Q. You mean he did that when he got on top of you, is that right? A. Yes.

Q. And when he got off the top of you then did he go to sleep or did he do something else?

A. After what?

Q. What did he do after he got off the top of you, after putting his penis in your private parts, what did he do then?

A. Well, with his tongue on me.

Q. Did he go to sleep?

A. No, after I—he did all that.

Q. After he told all the things—you didn't tell about him putting his penis in there when you told it to Mr. Kirkland, did you? Did you just remember that he did that? [39]

A. Well, I thought you mean he put—

Q. Did he do that lots of times during the three weeks while you were there?

A. Every night, mostly.

Q. Every night he put his penis in your private parts?

A. No, no, on the private parts, on the back, too.

Q. Also in the private parts, is that right? ,

A. Yes.

Q. What would he do? When happened when you got up the next morning? Did he go off to work? A. Go off to work.

(Testimony of Eva Nickita.)

Q. Did you go to sleep that night, too, after these things? Did you go to sleep?

A. I was crying all night and finally I went to sleep.

Q. Did you finally go to sleep? A. Yes.

Q. And when you awakened the next morning was Mr. Glenn still there?

A. There—was out in the barn.

Q. And did you do any work around the house that day? A. No, I sat and cried.

Q. Did you finally quit crying?

A. No, I didn't, never stopped crying.

Q. Did you cry for three weeks?

A. Yes, I didn't even say a word to him. [40]

Q. Did you get any food while you were there?

A. I ate some.

Q. Did you cook him any meals?

A. No.

Q. You didn't try to cook for him?

A. No.

Q. Did you clean his house? A. No.

Q. Did you do any work there at all?

A. No.

Q. You just sat and cried? A. Yes.

Q. Did you ask him to take you back to Minnie's? A. I told him I would go home.

Q. And where was home? At Minnie's place?

A. No.

Q. Where was home?

A. I was staying with Minnie some nights and

(Testimony of Eva Nickita.)

sometime I stay with my other Aunt and sometimes I stay with my sister.

Q. Now, Eva, before you went with Mr. Glenn, before you went with Mr. Glenn to his house, had you ever been in bed with any other man?

Mr. Kirkland: Objection, your honor.

The Court: Sustained.

Mr. Butcher: I would like to make an offer of proof, [41] your honor, and support it with authorities that in a charge of sodomy great liberality in cross examination must be granted.

The Court: I have already ruled against it in your opening statement.

Mr. Butcher: What is that?

The Court: I have already ruled that evidence of that kind is not admissible on your opening statement.

Mr. Butcher: This is cross examination, your honor.

The Court: I know but the rule includes the whole case.

Mr. Butcher: Well, this is an important juncture in the trial, your honor, and we have the best authorities on the subject that in a charge of sodomy the previous chastity of the female——

The Court: I do not want to hear any argument of that kind, particularly in the presence of the jury. If you think you have authorities of the kind you intimate you may argue outside of the presence of the jury.

Mr. Butcher: Is your honor prepared to hear that argument now or wish it further on?

The Court: Whatever is the wish of counsel.

Mr. Butcher: I would like to proceed with proper cross examination and I am prepared to argue the matter now.

The Court: Very well; the jury may be—we will be in recess for ten minutes. The jury may retire to the jury [42] room. The jury room is up there (indicating). You may just dispose of yourselves as you would during an ordinary recess.

(Whereupon the jury left the jury box and retired to the jury room to await being called, and the following proceedings were then had, in the absence of the jury.)

The Court: You may proceed with the argument.

Mr. Butcher: If your honor please, Mr. Shaw is going to make the argument.

Mr. Shaw: If it please the court, I am going to cite one authority here, in order to save the time of the court—*Redmon v. State*, Supreme Court of Nebraska case, July 16, 1948, 33 N.W. Repts. 349, 350-352. The court here in this case quotes in great detail from Wigmore's Code of Evidence and I do not deem it necessary to read any more. I would like to read, your honor, this quotation from Wigmore first—quoting from *Redmon v. State*, Dean Wigmore says in regard to such evidence:

“There is, however, at least one situation in which chastity may have a direct connection with veracity, viz. when a woman or young girl testifies as complainant against a man charged with a sexual crime,

—rape, rape under age, seduction, assault. Modern psychiatrists have amply studied the behavior of errant young girls and women coming before the courts in all sorts of cases. Their psychic complexes are multifarious, distorted, partly by inherent defects, partly by diseased derangements [43] and abnormal instincts, partly by bad social environment, partly by temporary psychological or emotional conditions. One form taken by these complexes is that of contriving false charges of sexual offenses by men. The unchaste (let us call it) mentality finds incidental but direct expression in the narration of imaginary sex-incidents in which the narrator is the heroine or the victim.”

In this case, *Redmon v. State*, one of the grounds advanced for reversal, and the case was reversed, your honor, was whether or not such evidence as this might be adduced on cross examination. The first citation of error was that the defendant as a ground for reversal is: “In prosecutions for sexual crimes for the purpose of reflecting on the credibility of the prosecutrix, she may be cross examined to show she is accustomed to having promiscuous sexual relations.” And in this case, quoting Dean Wigmore, the Supreme Court of Nebraska held that it was reversible error not to permit such evidence as to the chastity of the prosecutrix to say nothing of the matter of impeachment. This is not on the subject of impeachment. It is the argument of counsel for the defendant. We have the right to ask this type of question on the matter of impeachment alone but certainly upon the matter

of the prosecutrix' chastity on such a charge as this, your honor is aware of [44] the difficult problem defendant is up against in a case of this kind, as pointed out.

The Court: I do not want to hear any more argument. If that is all the authority you have the court will give you its ruling. You can find one or two decisions on any way that you want to find them but that does not make it the weight of the authority. It is not the ruling in this jurisdiction.

Mr. Shaw: This is Dean Wigmore.

The Court: I know but Dean Wigmore is at variance with authorities' views and are not adopted by authorities in all cases and this court is bound by what it conceives to be the weight of authority and not by Wigmore.

Recess for five minutes.

(Whereupon at 4:25 o'clock p.m., September 23, 1953, court reconvenes, following a 15-minute recess, the jury having been recalled to the jury box, and the following proceedings were had.)

EVA NICKITA

resumes the witness stand and testifies as follows on

Cross Examination

By Mr. Butcher:

The Court: Mr. Myer, you may exchange seats with Mrs. Swanson. (The juror did so, being hard of hearing.)

You may proceed with the cross examination. [45]

Q. Eva, after you left Mr. Glenn's house did

(Testimony of Eva Nickita.)

you ever write him a letter, write Mr. Glenn a letter? A. Write a letter?

Q. Did you write a letter to Mr. Glenn?

Mr. Kirkland: Your honor, I object to that as being immaterial.

The Court: Objection overruled.

Q. (By Mr. Butcher): Do you understand what I mean by writing a letter? A. Yes.

Q. Did you write a letter to Mr. Glenn?

A. Yes.

Q. And in that letter did you ask him for some money? A. Yes.

Q. And did you tell him that if he didn't give you some money you would get him in trouble?

A. Get him in trouble?

Q. Yes. A. Yes.

Q. And did he send you any money?

A. No.

Q. Who is the first person you told this story to that you told in court this afternoon? Who did you tell it to? A. This afternoon?

Q. Yes, before you told it this afternoon did you tell it to [46] somebody else?

A. What about? The letter?

Q. No, what about you and Mr. Glenn did over at his house? A. This afternoon.

Q. Did you tell anyone at another time this story that you told in here this afternoon?

A. What?

Q. Did you ever tell anybody about what happened over to Mr. Glenn's house?

(Testimony of Eva Nickita.)

A. Yes, I told—you mean those two men?

Q. Did you ever talk to Mr. Meaney? I don't mean Mr. Kirkland. Did you talk to somebody out at Eklutna?

A. You mean this afternoon?

Q. No, right after this happened or some time before you came into court here.

A. I wasn't in Eklutna this afternoon.

Q. Did you ever talk to any one at all about this matter? Did you talk to Mr. Jenkins?

A. Yes.

Q. Where did you talk to him?

A. This afternoon.

Q. No, some other time? A. In Palmer.

Q. Over in Palmer. Is that where you were going to school? A. Yes. [47]

Q. You are in a home over there, are you not?

A. No, I am not in home any more.

Q. You were at the Lazy Mountain Home?

A. Yes, I was at the Lazy Mountain Home.

Q. Is that where Mr. Jenkins talked to you?

A. Down in Palmer.

Q. Whereabouts in Palmer?

A. In Dorothy Saxton's office.

Q. Is that the first time that Mr. Jenkins talked to you? A. Yes.

Mr. Butcher: May I ask the court, does the court still stand on his previous ruling that I may not inquire as to where she told her age on previous occasions?

The Court: Yes.

(Testimony of Eva Nickita.)

Mr. Butcher: Eva, if you remember—do you remember when you told Mr. Jenkins about this in Dorothy Saxton's office? Do you know when that was? A. It was in——

Q. That was last when? A. January.

Q. January, month? A. Yes.

Q. This last January or before that?

A. This last January.

Q. This last January. That is the first time you ever told it? [48] A. Yes.

Q. And how—what happened that caused you to tell it then, after waiting two years? What made you tell Mr. Jenkins at that time?

A. Well I——

Q. What is that? A. He asked me.

Q. Did he ask you if Mr. Glenn had done these bad things to you? A. Yes.

Q. Did Mr. Jenkins ask you if Mr. Glenn did something to your back?

A. Yes, he asked me about it and I told him. I told him about it.

Q. And did he, Mr. Jenkins, ask you if he put his mouth on your privates? Did Mr. Jenkins ask you that?

A. No, I said that he did put his mouth.

Q. You told Mr. Jenkins that that is what he did, is that right? A. Yes.

Q. Now, had you talked to anyone before Mr. Jenkins about this? A. Before Mr. Jenkins?

Q. Other than Mr. Jenkins?

A. After? [49]

(Testimony of Eva Nickita.)

Q. No, before? A. No.

Q. No one but Mr. Jenkins and did he come and get you and take you to Miss Saxton's office, Dorothy Saxton's office to ask you these questions?

A. No, the highway patrolman.

Q. Came and got you? A. Yes.

Mr. Butcher: That is all, your honor.

Redirect Examination

By Mr. Kirkland:

Q. Now, Miss Nickita, you stated that you wrote a letter to the defendant, Mr. Glenn, asking for money, is that correct? A. Yes.

Q. Now, how much money did you ask Mr. Glenn for? A. How much money?

Q. Yes. A. How much money I asked?

Q. No, how much did you ask Mr. Glenn to send you? A. \$10.00.

Q. And when did you write this letter and ask for this \$10.00?

A. I don't remember when I wrote it. [50]

Q. Was it recently or quite sometime ago?

A. Quite sometime ago.

Q. Now, did Mr. Jenkins ask you to tell what happened to you or did he first—did Mr. Jenkins ask you to tell him what happened to you?

A. He asked me what happened and I told him what happened.

Q. Then did you tell him what happened?

A. No, he asked me.

Q. And then you told him what happened?

(Testimony of Eva Nickita.)

A. Yes.

Q. Now, on your cross examination, when this gentleman was asking you questions, you stated that you had a drink of whiskey on the evening you went to the defendant's house. Now, how did you happen to have that drink of whiskey?

A. The whiskey?

Q. Yes. A. Well, I didn't want it.

Q. Well, where did you get the whiskey?

A. Ted had it.

Q. Did you want to drink it?

A. I didn't want to drink it.

Q. Well, why did you drink it?

A. Because he kept on asking me to drink it.

Q. Did he touch you at any time?

A. Touch? [51]

Q. Yes, did he make you drink it, in other words?

Mr. Butcher: Now, your honor, that is going too far, even with the liberality of the court's ruling, that is going too far in fairness to this defendant. This is cross examination, not direct, and it shouldn't be leading here.

The Court: I think it is permissible in view of the reluctance of the witness. Objection overruled.

Mr. Butcher: Exception.

Q. (By Mr. Kirkland): Did anyone ever hit you, slap you?

Mr. Butcher: Further objected to on the grounds that it is irrelevant, immaterial and incompetent, your honor, whether he forced her to drink or

(Testimony of Eva Nickita.)

whether he hit her or slapped her has nothing to do with the issues of this case.

The Court: You better make that more specific as to who slapped her.

Q. (By Mr. Kirkland): Did the defendant slap you on the first evening that you went to his home?

A. Yes.

Q. Now, tell us about that?

Mr. Butcher: Your honor, this is not proper redirect examination. Any allegation or accusation of this kind should have been testified to on the direct examination. It is not a proper subject for redirect examination, which is to touch only upon those subjects brought out on cross examination or any new material. [52]

The Court: That may be true but you brought out something about these relations so the objection is overruled.

Q. (By Mr. Kirkland): Now, will you tell us about that, Miss Nickita? A. About what?

Q. Did the defendant, Mr. Glenn, ever slap you?

A. Yes.

Q. Now, will you tell us about it? When?

A. When we got in bed slapped me.

Q. Why did he slap you?

A. Because I didn't want to go to bed with him.

Mr. Kirkland: That is all.

Mr. Butcher: I ask that all that testimony be stricken on the grounds that it is not proper redirect examination, your honor.

The Court: Motion denied. Call your next witness.

(The witness was thereupon excused and left the stand.)

Mr. Kirkland: If the bailiff please, the next witness is in the custody of the marshal in my office.

DAVID C. GLASSCOCK

called as a witness on behalf of the plaintiff, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Kirkland: [53]

Q. Will you state your name, please, sir?

A. David C. Glasscock.

Q. You want to pull the microphone closer to you. Where are you presently residing, Mr. Glasscock?

A. McNeil Penitentiary, Stillacoom, Washington.

Q. Mr. Glasscock, were you incarcerated at the Federal jail here in Anchorage? A. I was.

Q. Did you have occasion to become acquainted with the defendant in this case? A. I did.

Q. And did you have any conversations with that defendant? A. Yes.

Q. And is that the man sitting at the end of the table over there? A. That is.

Q. Now, Mr. Glasscock, I am going to ask you some embarrassing questions. I want you to repeat the answers exactly and in the exact words that were given. Did you ever have any conversation

(Testimony of David C. Glasscock.)

with the defendant about the charges upon which he is being held? A. Yes, sir.

Q. And what statements did he make with reference to those charges?

A. Well, one time he made the statement that he would probably [54] plead guilty to the rape and sodomy charge but that he would fight the murder charge.

Q. Now, how did you happen to——

Mr. Butcher: Your honor, I object to that question. The only charge that is involved here is the charge in the indictment. Now, this witness has brought out charges other than is before the court but which are not part of the issues of this case and I ask that that part of his answer be stricken.

The Court: The reference to murder is stricken. The jury is ordered to disregard it.

Q. (By Mr. Kirkland): How did you happen to have this conversation with the defendant?

A. Well, he came in the Federal jail rather late in the afternoon. As you know, there are approximately 20 to 26 bunks in there and the newest one in there was delegated to sit up late at night and Mr. Glenn sat up quite late of night and the first night he asked me if I had enough cigarettes and I told him I did and thanked him. He started talking about his case. Well, he talked about these sexual relations he had had with this 14-year-old girl, as he said, and said that he had—it is hard to put into words—that he had had intercourse with her both front and the rear and that he had gone

(Testimony of David C. Glasscock.)

down on her but the going down on her was the best of the works and he asked if it made me hot and propositioned me to go down on him [55] and I told him "no, I wouldn't." He always propositioned me.

Mr. Butcher: Your honor, this is going beyond the issues of the case again and the testimony he is attempting to elicit from the witness is incompetent and irrelevant.

The Court: The latter part of the answer is irrelevant.

Mr. Butcher: I think this witness should be instructed to answer the questions that are asked of him and to refrain from volunteering information that has nothing to do with the case. The United States Attorney should merely elicit what is relevant to the case.

Mr. Kirkland: Has his honor ruled that the sexual attempts with this defendant is immaterial as evidence in this case?

The Court: Yes, at this stage of the trial the evidence of other offenses is not admissible except within the compass of the rule and there has been no development yet that would call for the admission of such testimony. It might be after—at a later stage of the trial but not now.

Mr. Kirkland: Your honor, could I cite some authority in behalf of that proposition where there is a case of this nature?

The Court: Well, the jury is excused. We will

(Testimony of David C. Glassecock.)

be in recess as far as the jury is concerned for five minutes.

(Thereupon the jury was excused and left the courtroom [56] and the following proceedings were had.)

Mr. Kirkland: Your honor, in the case of *People v. Molineux* (Court of Appeals of New York. Oct. 15, 1901.), 61 N.E. 286, and in this case——

The Court: Now tell me what the charge was.

Mr. Kirkland: Your honor, the charge in that case was murder and the prosecution wanted to bring in evidence—it was murder by poisoning—of a similar crime. The court held that that was not admissible but they went on to a lengthy dissertation on that matter and the court held that:

“1. On a criminal trial the state cannot prove any crime against the defendant which was not alleged in the indictment as a foundation for a separate punishment, and as aiding the proof that he was guilty of the crime charged, unless such other crime tends to prove motive, intent, the absence of mistake or accident, the identity of the person charged with the commission of the crime or a common scheme——” [57]

The Court: That is just the rule to which I referred but under which of those do you contend this is admissible now?

Mr. Kirkland: A common scheme to show propensity.

The Court: To show what?

Mr. Kirkland: Propensity.

(Testimony of David C. Glascock.)

The Court: Do you have any authorities on sodomy, for instance?

Mr. Kirkland: No, your honor, I don't, not on the particular crime of sodomy.

The Court: In other words, you offer this for the purpose of proving disposition?

Mr. Kirkland: Yes, your honor. To go further I would say a sexual attempt of the type such as the witness just testified to and what the defendant is charged with are so closely related in nature.

The Court: Well, I am in doubt whether it is admissible but it is near quitting time. Perhaps we should adjourn, unless you have other matters to inquire into with this witness, or are you about through with him?

Mr. Kirkland: I have a few more matters; I would like to go on with witness, your honor.

Mr. Shaw: If it please the court, before the court rules on that I would like to say one thing, to point out again that the character of the defendant is being attacked when his character has not been put into evidence, at least as yet, and [58] secondly, that this alleged conversation, which the witness was about to testify to there, took place subsequent to the time that the crime is charged.

The Court: That would not make the slightest difference. It could have taken place five minutes before he took the witness stand so far as showing admissions or anything that might be the foundation for impeachment.

Mr. Butcher: Your honor, what Mr. Shaw means

(Testimony of David C. Glasscock.)

is the acts that he spoke of—that he wanted him to go down on him and he wanted him to do other things—as tending to show his disposition to do it all took place after the crime alleged in the indictment and not before.

The Court: I do not think that would be what you would call important because disposition would presumably be the same at one time as at another time. The court will be in recess for an additional five minutes to examine the authorities on the proposition.

(After a short recess court re-convenes and the following proceedings were had:)

(The jury resumed their seats in the jury box at this time also.)

The Court: The weight of authority appears to be that evidence of other offenses with other persons is not admissible. The objection is sustained.

Q. (By Mr. Kirkland): Mr. Glasscock, referring to the [59] conversation you had with this defendant and you stated what this defendant had said to you pertaining to the sexual charges?

A. Yes.

Q. Were those the defendant's exact words?

A. Not his exact words, no, sir.

Q. Would you repeat the defendant's exact words?

A. To the best of my recollection the words were that "I fucked her and I went into the rearway but going down on her was the best part of it all."

Mr. Kirkland: Your witness.

(Testimony of David C. Glascock.)

Mr. Butcher: Your honor, in view of the time I would just as soon postpone my cross examination of this witness until tomorrow morning.

The Court: Well, I think that since the court is so pressed for time that we ought to conclude with this witness tonight.

Cross Examination

By Mr. Butcher:

Q. Mr. Glascock, what are you serving time in McNeil Island for?

A. Interstate transportation of securities or goods that could [60] be used in counterfeiting, and forgery.

Q. Have you ever served in any mental institution? A. No, sir.

Q. Have you ever been declared insane?

A. No, sir.

Q. By any court or jury? A. No, sir.

Q. Are you up here being examined now by the psychiatrist? A. No, sir.

Q. Have you made a plea to the district attorney's office or to the court to be transferred from McNeil Island for reasons of insanity?

A. I have not for reasons of insanity, no, sir. I made a plea to be transferred because of physical health. The plea has been granted by the Director of the Bureau of Prisons.

Q. And is mentality involved, too?

A. No, sir.

Q. Do you have a copy——

(Testimony of David C. Glasscock.)

Mr. Kirkland: I object to this. I do not have any control over a person down there so it has to be immaterial.

The Court: Well, it seems to me that the examination has all but exhausted this particular subject, has it not?

Mr. Butcher: Yes, your honor.

Q. Mr. Glasscock, have you had any conversation with the district attorney's office about the fact that if you testify [61] in this case that you will be relieved from further prison service?

A. No, sir.

Q. What are you doing up here at this time?

A. I was brought up on a writ of habeas corpus to testify in this case.

Q. What was that?

A. I was brought up on a writ of habeas corpus to testify in this case.

Q. And otherwise you are to return to McNeil Island? A. Yes, sir.

Q. You do have this application in for transfer to an institution? A. Yes, sir.

Q. And what is that institution?

A. Petersburg, Virginia, sir.

Q. And what kind of an institution is it, if you know?

The Court: Well, I think that is going too far.

Mr. Butcher: Well, if it were a mental institution, your honor, we should know it and the jury should know it.

(Testimony of David C. Glasscock.)

The Court: If he knows—he has already explained fully.

Mr. Butcher: It just requires that we come into court with another witness to show what kind of an institution it is. If this witness knows, I think he should answer. [62]

The Court: Objection sustained. Rather, it is going too far.

Q. (By Mr. Butcher): Mr. Glasscock, prior to your conviction and sentence to McNeil Island had you served time in any other prison?

A. No, sir.

Q. In any reform school? A. No, sir.

Q. Had you served time in any institution of any kind? A. No, sir.

Q. This was your first offense?

A. Yes, sir.

Q. Had you ever forged checks in any other place? You do not want to answer that question?

Mr. Kirkland: Your honor, I object to that question.

The Court: Objection sustained. No question of that kind is permissible.

Mr. Butcher: Withdraw the question. That is all.

The Court: Any redirect?

Mr. Kirkland: No, sir.

The Court: Ladies and gentlemen of the jury, we are about to adjourn. The case will be resumed at 10:00 o'clock tomorrow morning. In the meantime you are admonished not to talk about the case with anybody, either among yourselves or with any

other person, nor to allow anybody to talk with you [63] about it and if any one should attempt to talk to you about the case, you should warn him that you are on the trial jury. If he persists you should report the matter immediately to the court or to the United States Attorney. You are also not to come to any conclusion concerning the case until after it is submitted to you. You may adjourn court to 9:00 o'clock a.m.

(Thereupon, at 5:10 o'clock p.m., September 23, 1953, court was adjourned to the next morning, this case to be resumed at 10:00 o'clock a.m., September 24, 1953.) [64]

Court is convened at 10:00 o'clock a.m., September 24, 1953, at the request of the court the Deputy Clerk calls the roll of the trial jury, and each answers present to his or her name, whereupon the following proceedings were had:

Mr. Kirkland: I would like to call Jack Jenkins to the witness stand.

JACK JENKINS

called as a witness on behalf of the plaintiff, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Kirkland:

Mr. Butcher: If it please the court, before this witness testifies—with reference to the last witness who testified, Mr. Glasscock—this witness testified in the presence of the jury of certain charges which are not before this court. The court is familiar with,

(Testimony of Jack Jenkins.)

we believe, that that statement which the witness made was so prejudicial that it is impossible for the defendant to have a fair trial and for that reason we move the court that the court declare a mistrial.

The Court: Motion denied. The jury is instructed, if I have not already instructed the jury, that reference to any other crimes other than the one on trial insofar as the reference to the defendant should be disregarded by the jury and you [66] should not allow yourselves to be influenced by any such reference.

Mr. Kirkland: If it please the court, before I proceed with this witness I believe there are some minors in the [66-A] courtroom and the court made a ruling that no juveniles would be allowed in the courtroom.

The Court: All persons under 21 years of age are excluded—do you expect testimony of the kind elicited from the previous witness?

Mr. Kirkland: No, sir, I do not expect testimony of that type.

The Court: No reason for excluding.

Mr. Kirkland: All right.

Q. (Mr. Kirkland): Will you state your name, please? A. Jack Jenkins.

Q. What is your occupation?

A. Criminal Investigator for Alaska Native Service.

Q. How long have you been a criminal investigator for the Alaska Native Service?

A. Five years.

(Testimony of Jack Jenkins.)

Q. Then during the year of 1950 you were a criminal investigator for the Alaska Native Service?
A. Yes.

Q. Mr. Jenkins, will you tell the court and jury how you happened to interview Miss Eva Nickita, who is the complaining witness in this case.

Mr. Butcher: Your honor, I object to that question on the grounds how he happened to interview Eva Nickita has nothing to do with the charge that is before this court. If he [67] knows anything about the crime, then he can testify about it.

Mr. Kirkland: If the court please, counsel for the defense on the cross examination and also in his opening statement tries to bring forth a malicious motive or an intent and also in cross examination of Miss Nickita brought forth how Mr. Jenkins obtained the statement and so forth and what the conversation was.

The Court: Well, but while it might become proper to put in evidence of this kind, if matters of that kind are brought out in defense it is wholly without foundation at the present time and the objection is sustained.

Mr. Kirkland: Then I have no questions of the witness, your honor. That is all.

(Thereupon, the witness was excused and retired from the witness stand.)

Mr. Kirkland: The Government will rest, your honor.

The Court: You may proceed with the defense.

Mr. Butcher: We have a motion, your honor,

which I think should be presented to the court in the absence of the jury.

The Court: The jury is excused until called.

(Whereupon, the jury leaves the courtroom to await being called and the following proceedings were had in the absence of the jury.)

Mr. Butcher: Your honor, in connection with Count No. III, Count No. II having been dismissed and evidence having been produced in connection with Count No. II and with reference to Count No. III we submit, your honor, that the essentials of the act of sodomy, as alleged in Count No. III, that is, that Theodore Roosevelt Glenn did commit sodomy with a female, to-wit: Eva Nickita; That the said Theodore Roosevelt Glenn then and there did insert his penis in the anus of Eva Nickita and did then and there agitate his penis in the said anus of said Eva Nickita, has not been proved in this court by the slightest evidence. The only evidence before this court, your honor, is that the complaining witness testified that he did a bad thing and the district attorney, in his efforts to solicit from the witness what in fact did happen—of course he was permitted to ask leading questions but among those leading questions—and considering all of those leading questions—there was not one time when the question was put to her or did she respond to such a question, did she state that he put his penis in her anus, which is the essence of the crime of sodomy alleged in this count. All she did was point to her buttocks and said after he had been on top of her and after he put his mouth on her

privates he put it on her back and after considerable effort here, she finally turned half around and touched her buttocks and that is the sole testimony, your honor, as your honor will recall that is submitted. [69]

Now, that is not sufficient to prove the crime of sodomy. I will submit that there has been enough evidence here to go to the jury on the question of the placing of the mouth upon the private parts of Eva Nickita and there is evidence to go to the jury on that but on the sodomy Count No. III there has not been sufficient evidence and I move that that count be removed from any consideration by the jury, that the jury, if necessary, be directed to find a verdict of not guilty on that particular matter.

The Court: Call the jury. Motion denied.

(Whereupon, the bailiff recalls the jury and the jury returns to the courtroom.)

Mr. Shaw: Call Mrs. Bryant. I think she is in the courtroom.

MRS. DALE BRYANT

called as a witness on behalf of the defendant, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Shaw:

Q. Will you state your full name to the jury, please?

A. Mrs. Dale Bryant—Charlotte Kruger Bryant.

Q. And where do you live, Mrs. Bryant? [70]

A. I am at the Lazy Mountain Children's Home in Palmer.

(Testimony of Mrs. Dale Bryant.)

Q. At or near Palmer?

A. Five miles from the town of Palmer.

Q. Are you the Secretary of that institution?

A. Yes, I am Secretary and Treasurer.

Q. You have charge of the books and records and the list of the people you keep out there?

A. Yes, sir, I do.

Q. Did you bring some records to court with you this morning? A. Yes, I did.

Q. Were you acquainted with Eva Nickita?

A. Yes, I am.

Q. Is she a member of the group that lived out at the home?

A. She is working in town at a private home just now but she did live in our home a couple of years.

Q. Were you in the Lazy Mountain Home until 1950?

A. No, I was in the States in 1950; I didn't return until 1951.

Q. Were you at the home when Eva Nickita first came there?

A. She came just one week—when I was down in Valdez—it was in the middle of May. We had come back in the beginning of May and had gone down to Valdez for some belongings and when we came back Eva had come.

Q. The personal record you have brought into court, Mrs. Bryant, does it show there the birth date of Eva Nickita? [71]

Mr. Kirkland: Objection, your honor.

(Testimony of Mrs. Dale Bryant.)

The Court: Objection sustained.

Mr. Shaw: If it please the court, I would like to make an offer of proof.

The Court: It is not a matter of offer of proof; it is a matter of relevancy. I do not see how it can be relevant here now.

Mr. Shaw: This goes to the credibility of the witness. The purpose of this offer here is to impeach the testimony of the witness.

The Court: That would be on an immaterial matter. Objection sustained.

Mr. Shaw: Exception, your honor.

Mr. Shaw: That will be all, Mrs. Bryant.

Mr. Butcher: I would like to show it is material, your honor. It is immaterial before he hears the offer of proof; wouldn't it be better to hear the offer?

The Court: The age of the alleged victim here is absolutely immaterial for any purpose. That is the ruling of the court and I do not want to hear any argument on it—for lack of time, if nothing else.

Mr. Butcher: May I ask the court a question? If the witness takes the stand and testifies to a certain fact, presuming it is her age, and it turns out it is not true?

The Court: I just got through ruling on the ground [72] it is immaterial and so you cannot contradict a person on an immaterial matter.

Mr. Shaw: Call Mrs. Nelson.

MRS. MINNIE NELSON

called as a witness on behalf of the defendant, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Shaw:

Q. What is your full name?

A. Minnie Nelson.

Q. Where do you live, Minnie?

A. Eklutna.

Q. How long have you lived there?

A. I have been there seven years.

Q. How long have you lived in Alaska?

A. All my life.

Q. How old are you? A. 55.

Q. Were you living at Eklutna in 1950?

A. Yes.

Q. Are you married? A. Yes.

Q. Were you living there with your husband at that time?

A. Yes, I was living in Eklutna with my husband. [73]

Q. Are you acquainted with Eva Nickita, the complaining witness in this case? A. Yes.

Q. Are you related to her? A. Yes.

Q. What is the relationship?

A. Well, her mother is third cousin or second cousin to me; I don't know.

Q. That would make you a cousin of some kind, would it not? A. Makes us relations.

Q. Did Eva Nickita stay at your home any time during the year 1950? Did she live there?

(Testimony of Mrs. Minnie Nelson.)

A. Yes.

Q. Do you remember what month she lived there with you? A. No, I don't remember.

Q. Would it have been in the summer or——

A. Winter.

Q. In the winter? A. Yes.

Q. Did Eva Nickita live at any other place in Eklutna besides your home?

A. Yes. Stayed with her sisters and her aunties.

Q. She stayed various places with others, too?

A. Yes.

Q. And now, I call your special attention to the month of [74] November of 1950? Are you having trouble hearing me? I will move a little closer. In November, 1950, do you remember if Eva was staying at your place?

A. Yes, she stayed at my place.

Q. Did she have a job? Did she work?

A. No.

Q. Do you remember when Eva left your place? When she no longer stayed there? Do you remember that, if it happened?

A. She left. She was going to stay with her sister and she left me.

Q. Well, do you remember in the month of November, 1950? You have testified that Eva stayed with you sometime in 1950 and the question is: During the fall of 1950 do you remember Eva being there and remember her leaving?

A. Yes, she stayed with me and then she left.

(Testimony of Mrs. Minnie Nelson.)

Q. Do you remember who she left with when she left?

A. Well, Charlie Rosseau and his wife and Ted.

Q. Who? A. Ted.

Q. Who is Ted?

A. I don't know. That is what they call him—Glenn.

Q. Ted Glenn?

A. And I don't know who the other guy is.

Q. Another fellow?

A. Old man. I forgot his name and they come up there and took [75] her away from there.

Q. Was this in daytime or night time?

A. Night time—around 10:00 o'clock. We was already in the bed already. Charlie Rosseau was the one that brought them up there.

Q. Will you tell us what was said when they came?

A. Yes, he said he want to take Eva with them.

Q. Who said this? Mr. Glenn?

A. Charlie Rosseau and his wife and Glenn was there and they was talking there and I was mad because I don't want nobody around there so he said, get wife. You willing to go? She said, yes.

Q. They asked Eva to go?

A. I said, I asked her if you willing to go and she said, yes.

Q. What did you ask her to go for?

A. I asked her is she was willing to go with Ted and she said yes.

Q. What was she going for?

(Testimony of Mrs. Minnie Nelson.)

A. I don't know—for a husband, that is all.

Q. Was anything said about her being a house-keeper? A. Well, he said——

Mr. Kirkland: Objection. That is leading too far.

A. Then he told her he said——

The Court: Just calling her attention to something [76] about which there might have been conversation.

Mr. Kirkland: The first question, which was asked before, was the purpose of her going there and the witness has testified and answered that question.

The Court: First you should ask her if she has related everything that was said there and if she recalls anything else. If she is unable to recall something else, you might call attention to it but otherwise you should not suggest it to her until you have exhausted the other means.

Mr. Shaw: Would you pull the microphone a little closer to you there?

A. Huh?

Mr. Shaw: May I approach the witness?

The Court: Speak louder. If you cannot speak louder you will have to get your mouth closer to that microphone.

(The witness gave a big sigh at this point.)

Q. (By Mr. Shaw): Did you talk to Eva this night about going to these people?

A. Well, she was willing to go with them; she was willing to go so they left.

(Testimony of Mrs. Minnie Nelson.)

Q. You say she was willing to go with them?

A. She was willing to go with them.

Q. To be Mr. Glenn's woman? A. Yes.

Q. Did Mr. Glenn ask her to go or did someone else? [77]

A. No, Charlie's wife. I mean Charlie's wife and Charlie, them was the one.

Q. Do you remember whether or not Mr. Glenn talked to Eva that night about it?

A. No, I didn't; just met them, that is all I notice about it.

Q. Did Eva—you said you were all in bed—did she have to get up and dress?

A. Well, she had no clothes on, just got up and go.

Q. Did she have any suitcases or anything?

A. Nothing. She didn't have nothing.

Q. She went with them?

A. She went with them.

Q. Did she go—did she make any protest against going? Did she say she didn't want to go?

A. No, she didn't even say that; she willing to go and she was gone. I don't know for how long and then she came back.

Q. How long was she gone?

A. I don't know how long she was gone; I didn't pay no attention.

Mr. Kirkland: I interpose an objection.

The Court: What grounds?

Mr. Kirkland: Irrelevant and immaterial. Part

(Testimony of Mrs. Minnie Nelson.)

of it I thought was going to become material or I would have objected earlier.

The Court: What was the question? [78]

Mr. Shaw: The previous question was: if she went willingly.

The Court: What was the question to which the objection was made?

Mr. Shaw: Slipped my mind—the question was: How long did Eva stay before coming back? How long was she gone?

The Court: Objection overruled.

Q. (By Mr. Shaw): Will you answer the question? Do you know how long Eva was gone?

A. No, I don't know; I don't remember how long she was gone.

Q. Was it a day or a week or a month?

A. I don't know.

Q. Don't know. Do you remember when Eva came back?

A. Yes, she come back and she was very unhappy. Had a ring on and she says he is a good man and he said I couldn't cook or do anything. I said that is your fault. If you want him that is up to you. I got nothing to do with it. She called me Auntie. That is all I told her.

Q. Did she say why she came back?

A. Well, she said Ted was going outside, his mother was dying and he went outside and she have to stay with sister and after he comes back he would get her and he didn't never come around to my place.

(Testimony of Mrs. Minnie Nelson.)

Q. She was going to stay at your place again?

A. No, I don't want her there because her sister look after [79] her.

Mr. Shaw: If the court please, I would like to make an inquiry at this time. If your honor's ruling yesterday upon a case of cross examination concerning the reputation and chastity of the prosecutrix—

The Court: I do not want that re-opened any more. I have already ruled on that.

Mr. Shaw: Does the same ruling apply on direct examination?

The Court: On direct examination.

Mr. Shaw: Well that was cross examination when your honor made the ruling. I am asking—

The Court: If it is immaterial then it is immaterial now, whether it is direct or cross examination.

Mr. Kirkland: Your honor, I feel as though counsel should be remonstrated for even asking an opening statement. It was decided and it is casting an unfair inference to this jury.

The Court: The jury is instructed to disregard also all references to chastity.

Mr. Shaw: No further questions.

Cross Examination [80]

By Mr. Kirkland:

Q. Mrs. Nelson, who did you say came in your house that evening you were testifying about?

A. What?

(Testimony of Mrs. Minnie Nelson.)

Q. Who all came to your house the evening that Eva left?

A. Charlie Rosseau and his wife and Ted and other guy. I don't know what his name is.

Q. And where is Charlie now?

A. I don't know; he is in jail, isn't he?

Q. In where?

A. He is in jail, isn't he? I don't know.

Q. Well, where is Mrs. Rosseau?

Mr. Shaw: I object, your honor.

A. She is dead.

Mr. Shaw: That is irrelevant and immaterial.

A. She died.

The Court: Objection overruled.

Q. (By Mr. Kirkland): Did you have anything to drink that evening? A. No.

Q. Did they bring you anything to drink?

A. No.

Q. Did you go with them that evening when they left?

A. I went with them; I went as far as Palmer and I come right back. Didn't have no drink with them. [81]

Q. Have you been convicted of a crime?

A. I don't understand.

Q. Have you ever been—

The Court: You will have to ask in language she understands. Ask her if fined or put in jail.

A. Yes.

Mr. Shaw: I object, your honor. I object, your

(Testimony of Mrs. Minnie Nelson.)

honor, to that question. It is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Q. (By Mr. Kirkland): Have you ever been put in jail? A. Yes.

Mr. Butcher: I object on the grounds the witness may be asked if she has ever been convicted of a crime, not if she has been arrested.

The Court: If she does not understand the word "crime", you should form the question: If she was ever fined or put in jail after being found guilty.

Q. (By Mr. Kirkland): Have you ever been fined or put in jail after being found guilty?

A. Yes, I was in jail and fined.

Q. Were you fined? In other words, did you pay the judge some money?

A. Yes—30 days.

Mr. Kirkland: I rephrase that question, also, your [82] honor.

Q. Did you pay the court some money? Did you pay any one any money as a result of being found guilty? A. I paid it to the judge.

Q. Now, how many times have you been found guilty of a crime?

A. I don't know; I can't answer that.

Mr. Butcher: The question is very clear in our statute that he may ask if she has been convicted of a crime and if she answers "yes" he drops the matter. Now, he is going on to find out how many times she has been arrested.

The Court: Not going into arrest and he has

(Testimony of Mrs. Minnie Nelson.)

the right to ask how many times convicted and for what. That has been the ruling of the court for years.

Q. (By Mr. Kirkland): How many times have you had to pay a fine and be in jail after being found guilty?

A. I can't remember all those things; I know I have been in jail lots of times. I don't know how many times.

Q. Lots of times? A. Yes.

Q. What for? A. Drunkenness.

Q. Did you discuss your testimony with the two attorneys in this case as to what you were going to say on the witness stand?

A. I can't understand all those things. [83]

Q. Did you talk about what you were going to say on the witness stand with Mr. Shaw—

The Court: She does not understand obviously.

A. I remember all the times. I am telling you the truth.

Q. What I am talking about—did you talk to Mr. Butcher and Mr. Shaw, the two gentlemen sitting over there, as to what you would say today where you are right now? A. No, no.

Q. Didn't ever discuss it?

A. Never discussed it with the attorneys.

Q. Never discussed it with them?

A. No.

Q. You are positive? That is all.

Mr. Kirkland: Your witness.

Mr. Shaw: No further questions. That is all.

(Thereupon, the witness was excused and retired from the witness stand.)

Mr. Shaw: Call Mr. Glenn.

THEODORE ROOSEVELT GLENN

called as a witness on behalf of the defendant, being the defendant, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Shaw:

Q. Will you state your full name? [84]

A. Theodore Roosevelt Glenn.

Q. And where do you live? Where did you live?

A. I lived at Palmer, about three miles out of Palmer.

Q. How long have you been in Alaska, Mr. Glenn?

A. Since 1939, come up here December 8, 1939, landed in Anchorage.

Q. And when did you move to Palmer?

A. In 1945, fall of 1945.

Q. What is your business and occupation? What was it in Alaska up there at Palmer?

A. I have been a carpenter by trade.

Q. Did you do anything else?

A. I was helping on the farm, yes; we was in the greenhouse business and I owned a farm.

Q. You owned a farm?

A. Yes, I owned a farm.

Q. Did you have a family when you moved to Palmer?

A. Yes, we had two adopted children that is part

(Testimony of Theodore Roosevelt Glenn.)
native and we had adopted them right here in Anchorage.

Q. What was your wife's name then?

A. My wife's name is Barbara Juanita Glenn.

Q. Are you living with her now?

A. No, I am not. We separated in 1950.

Q. Was that a divorce action? A. 1950——

Mr. Kirkland: Your honor, I object.

The Court: Objection sustained.

Q. (By Mr. Shaw): Calling your attention to all of 1950 were you living at Palmer at that time?

A. In 1950, yes, we were living in Palmer, that is, three miles out on this farm.

Q. In November of 1950?

A. In November, 1950, in 1950.

Q. Were you a single man at that time?

A. Yes, I was.

Q. Do you recall the circumstances—did Eva Nickita come to your place in November of 1950?

A. I beg your pardon?

Q. Did Eva Nickita come to your home in November of 1950? A. Yes, she did.

Q. Will you tell in your own words, if you will, the circumstances by which Eva came to your place?

A. Well, my wife and I had been separated for about, I'll say about two months and one evening after I got my chores and everything over with I was lonesome. I had been batching in a great big six-room house so I went over to my neighbors to see Kurtz just across the railroad track and highway

(Testimony of Theodore Roosevelt Glenn.)

about 400 yards, I will say, and drove in the yard and Mr. Kurtz and Charlie Rosseau was in the yard when I drove in and we talked there for a little bit. I don't remember about anything in [86] particular.

Mr. Kirkland: Your honor, I object.

The Court: Just eliminate those details and answer the question more directly.

A. I beg your pardon, sir?

The Court: Just eliminate the details and answer the question directly.

A. Well, I was getting to the point where I asked them if they knew where I might find a housekeeper. That was the point I was getting to and Charlie Rosseau said, you want a housekeeper? I said, yes, I would like to have one.

Mr. Shaw: Don't tell what they said, just tell what happened.

A. Then we got in the car and went to town, went through Palmer, went through Eklutna. It was getting late at night. We went to Minnie's, which I thought was her Aunt's house. I guess it was; I didn't know her at that time, and we went in and Charlie Rosseau saw the people first and went over to the bed and I stepped inside the door and they were talking to her, to Minnie.

Q. What were they talking about?

A. I don't know; I couldn't hear. I couldn't hear what they were saying, kinda leaning over talking to her and I couldn't hear a thing they was saying and wasn't paying much attention.

(Testimony of Theodore Roosevelt Glenn.)

Q. What was your understanding of the purpose of this trip? [87]

Mr. Kirkland: Objection, your honor.

The Court: He may state what he went there for but I think he stated that.

A. Yes, I did. It was a housekeeper.

Q. (By Mr. Shaw): Was Charlie Rosseau going to get you a housekeeper?

A. That was exactly it, and so the next I heard was Minnie says for her to get up and get her clothes on and, you know, we don't want you around here.

Q. Well, did the girl get up and put on her clothes?

A. She got up and was going to go with us as far as I know.

Q. You didn't—withdraw that—Did you ask her to go with you, yourself?

A. I didn't say anything to her at that time because they were getting her for me as a housekeeper; that was my intentions to get a housekeeper.

Q. Then what happened?

A. Well, the next I can remember we went into town and then we stayed in town and I took them home.

Q. Do you remember who all went to Eklutna, who was in the car with you, or however you went?

The Court: He has already testified to who went to Eklutna.

Mr. Shaw: He testified to certain people who

(Testimony of Theodore Roosevelt Glenn.)

went, your honor, but the question was if there were any others—who [88] all went.

A. To Eklutna?

Q. Yes, who was with you when you went there?

A. In my mind I can't remember of Charlie's wife being along but she could have been. I only remember Cecil Kurtz and Charlie Rosseau being along and Charlie Rosseau and Cecil Kurtz went into the house and I don't remember of his wife being there at all.

Q. And then you went back to Palmer? Then what happened?

A. We went back to Palmer and I took them home and I went home and Eva went with me.

Q. Did she go willingly?

A. She went willingly, seemed to be glad to go. I talked to her and told her I had a nice home and she seemed to be well pleased to go with me. I thought she was happy with the exception of times she seemed to get lonesome, except on several occasions.

Mr. Kirkland: I object. Let the counsel ask the questions.

The Court: Sustained. No use to let the witness ramble on.

Q. (By Mr. Shaw): How long did she stay at your place?

A. I am not sure, maybe three weeks or a month.

Q. What was your answer?

A. Somewhere between three weeks and a month, I think. [89]

(Testimony of Theodore Roosevelt Glenn.)

Q. Now, when you got to your house, was it in the night or daytime?

A. It was in night, early in the morning. It was getting along in the morning hours.

Q. About what?

A. Say it was about 2:00 o'clock or 3:00, possibly 3:00 when we got home.

Q. What did you do with the car, your car when you arrived there?

A. Left it outside the door in the yard.

Q. And then what did you and Eva do?

A. We got out and went in the house and I showed her the house and turned on the lights and showed her my house.

Q. Did you show her the entire house?

A. Yes.

Q. Room by room.

A. Radio and piano and nice furniture and the upstairs—had two bedrooms upstairs and one downstairs.

Mr. Kirkland: Objection again.

The Court: Objection sustained.

Q. (By Mr. Shaw): Did you prepare anything to eat that night? A. I beg your pardon?

Q. Did you have anything to eat immediately after your arrival?

A. I don't remember. [90]

Q. Did you go to bed that night?

A. Yes, we went to bed. We sat there for awhile.

Q. Did Eva do anything before you went to bed?

(Testimony of Theodore Roosevelt Glenn.)

What did she do between the time you arrived and the time you went to bed?

A. She looked the house over; she played the phonograph record player, which turns in on the radio and sitting there drinking beer in the meantime. I have beer. I usually always have beer and liquor in the house at all times, always have all my life and in the morning I get up and I usually like a drink and so I had beer.

The Court: You have answered the question.

Q. (By Mr. Shaw): Did she have any clothes with her? A. Yes, she had some clothes.

Q. Have a suitcase?

A. Yes, she had a suitcase.

Q. Did she unpack it that night? A. No.

Q. How long did she play the phonograph?

The Court: Well, that is immaterial.

Q. Now, try to refrain from going into too much detail, Mr. Glenn. When I ask you the questions tell us exactly what happened in response to my questions and stay away from extraneous details, if we can. The last question was: How long did she play the phonograph—I withdraw that question. Now, bearing in mind what I just said about telling only the explicit [91] details, will you tell what happened after you went to bed?

A. Well, I got tired and I went to bed. She was sitting in the chair drinking her beer and enjoying herself and pretty soon I told her when she got ready to go to bed to turn the light out and

(Testimony of Theodore Roosevelt Glenn.)

she came in and got on the bed with her clothes on.

Q. Where was your bed located?

A. My bed was just off the front room downstairs.

Q. A private bedroom?

A. Yes, a private bedroom.

Q. How many beds were in that house at that time?

A. Just three beds and a daveno bed.

Q. All located in one room?

A. No, two bedrooms upstairs and bed in each room and one downstairs.

Q. You had showed here these other beds?

A. That is right.

Mr. Kirkland: Your honor, I object to that line of testimony. That is completely immaterial whether he had shown her 50 beds or not.

The Court: When you bring out the fact there were several beds in the house then any question about showing her is immaterial.

Mr. Shaw: I shall attempt to have the witness tell the story as near as he can in his own words, your honor. [92] Will you present—

Mr. Kirkland: Your honor, I am objecting to that, what he is going to attempt to do. I think counsel should ask the questions.

The Court: You may ask him what occurred there or what he did but, of course, counsel has the right to insist that, rather than be allowed to tell it in narrative form it be made in response to questions and now, if you can get it out of him by ask-

(Testimony of Theodore Roosevelt Glenn.)

ing him what occurred without going into a lot of immaterial details, you may try.

Mr. Shaw: Very well, your Honor.

Q. (By Mr. Shaw): What happened after you told Eva to turn the light out and go to bed when she got ready?

A. She came in and got in bed with her clothes on and I told her if she wanted to sleep in my bed with white sheets, she would have to take her clothes off and couldn't sleep in sheets. She got up and took her clothes off and got in bed.

Q. With you? A. With me.

Q. Did you ask her?

A. I did not. She did it on her own. It wasn't necessary.

Q. Did she take all her clothes off?

A. She did; that was the way I slept. I suppose she took from that that was the way she should sleep.

Q. Did you ask her? [93]

A. I did not. I said take your clothes off.

Q. What happened?

A. I turned over and loved her up. She didn't object.

Q. Did you have sexual intercourse?

A. Yes, we did—naturally.

Q. How long were you in bed that night?

A. I don't remember. I wasn't working the next day so no hurry about getting up.

Q. Did you sleep late the next day?

A. I think we did, yes.

(Testimony of Theodore Roosevelt Glenn.)

Q. Now, during the three weeks or a month, as the case may be, while Eva was at your home, did she share your bed with you all the time?

A. Yes, she did. She slept with me every night that she was there and she had no objections. We had sexual intercourse occasionally. I don't think I am above normal in any way or any different from any other man but as far as sodomy is concerned I absolutely—

Mr. Kirkland: Objection, your honor.

The Court: On what ground?

Mr. Kirkland: The witness is merely rattling away. He has never been asked about anything of that nature.

The Court: What he is talking about now is relevant and so the fact that it is not in response to the question does not make any particular difference what he says. [94]

Mr. Kirkland: Never asked about what he did. He is telling about what he didn't do.

The Court: The only one who can object to an answer as not being responsive is the person who conducts the examination. If it is relevant—well, he is the only one who can object to it.

Mr. Shaw: Now, Mr. Glenn, you have testified that you had sexual intercourse. Did you at any time with Eva Nickita have any other kind of intercourse other than the normal sexual intercourse?

A. Absolutely not. I have been a married man for 19 years. That never entered my mind. I wasn't raised that way in the first place; I was raised a

(Testimony of Theodore Roosevelt Glenn.)

church member, even though I don't go to church.

Q. You heard the testimony of the prosecutrix on the stand here? A. I did.

Q. Are the statements—any of them—that she made in regard to placing of your tongue on her private parts true? A. Absolutely not.

Q. The other statements in regard to the back is there any truth in any of those?

A. No, absolutely not. That isn't true. I don't know where she got that or what caused her to say it even.

The Court: Well, we will recess at this point for [95] five minutes.

(After a short recess court re-convenes and the following proceedings were had:)

The Court: You may proceed.

Q. (By Mr. Shaw): Mr. Glenn, did you at any time ever put your lips on the private parts of Eva Nickita? A. No, I did not.

Q. Did you at any time ever place your penis in her anus? A. No, I did not.

Q. During the three weeks or a month which you said that she lived at your place what were you doing by way of occupation, if any?

A. I was doing construction work off and on, not steady.

Q. You did work some?

A. Yes, I was working out at the Experimental Farm on a construction job part time.

Q. Was that on your own farm?

(Testimony of Theodore Roosevelt Glenn.)

A. No, the Experimental Farm up in Matanuska Valley.

Q. How many hours or days did you, during this period, did you work there one or two or more—

A. Well, at least a week out of the time she was there.

Q. Now, where was Eva while you were doing this work? A. At home.

Mr. Kirkland: Objection, your honor; he couldn't possibly know where she was if he wasn't there. [96]

The Court: I guess his answer would have to be taken with whatever inference the jury wants to draw from his answer.

Q. (By Mr. Shaw): Was she at the house when you left to go to work? A. That is right.

Q. Every time? A. Yes.

Q. Did you always find her there when you came back? A. Yes.

Q. Did she do any—what did she do while you were gone, if you know?

Mr. Kirkland: Your Honor, I object to that. How does he know?

Mr. Shaw: He would see if she did work around the house. He would see the evidence.

The Court: What difference would it make? Objection sustained.

Q. (By Mr. Shaw): Do you know what she did?

The Court: That is just the question to which the objection was sustained. What she did is immaterial. There is only one occasion involved in this

(Testimony of Theodore Roosevelt Glenn.)

prosecution. What she did outside of that is certainly not involved in this case.

Q. (By Mr. Shaw): Was she free to come and go? A. Yes, she was.

Q. How did she happen to leave your place?

A. Beg pardon?

Q. How did she happen to leave?

A. To leave?

Q. To leave your place, yes.

A. Well, I was going Outside to see my mother because Mother was old and I figured it would be the last time I would get to see her and I went Outside for Christmas. I wanted to go out for Christmas so I left on the 20th of December and I took her to Eklutna on the 19th.

Q. Took?

A. Eva Nickita—to see if I could leave her down there while I was Outside.

Q. Did you explain that to Eva?

A. Yes, I did.

Q. Whose house did you take her to?

A. I took her to her sister's house, Catherine Theodore.

Q. Did you tell her you would—what did you tell her, if anything, in regard to the time you returned?

A. I didn't tell her when I was going to return because I didn't know how long I would stay out but I took her down there and I went in—she went in first and I took her suitcase and set it on the porch and she told me—

(Testimony of Theodore Roosevelt Glenn.)

The Court: You have answered the question.

Q. Did you make arrangements to pick her up again when you came back? [98]

Mr. Kirkland: Your honor, I am going to object. I hate to keep objecting on things that are irrelevant.

The Court: Objection sustained.

Q. (By Mr. Shaw): Did Eva ever go to your place any more after that? A. No.

Q. Did you see her or hear from her after that?

A. Yes.

Q. Will you tell the jury what it was—what you heard?

A. After I came back, I don't remember just how long after this, I got a letter from Eva Nickita, which the District Attorney has, and she asked me in the letter for \$10.00. Outside of that there was nothing bad about the letter except at the end somewhere within the letter she stated that if I didn't send it I would be sorry. I don't know what the threat meant or why I would be sorry.

Mr. Kirkland: Your Honor, I object. Please ask the witness to answer the questions.

The Court: Well, you have to object on the ground that what he is saying is incompetent and irrelevant, not merely it is not responsive. I have been ruling that for years around here.

Q. (By Mr. Shaw): During the time Eva stayed in your home did you ever strike her?

A. No. [99]

(Testimony of Theodore Roosevelt Glenn.)

Q. What was your relationship? Did you quarrel?

A. No, I was very good to her. In fact, nearly every night I come home I met her and would go up and put my arms around her.

The Court: You have answered the question.

Q. Now, Mr. Glenn, did you hear the testimony of the witness named Glasscock here yesterday?

A. Was I here?

Q. Did you hear his testimony? Do you recall it?

A. I couldn't hear it very good from where I was but I heard part of it.

Q. Did you understand—was it your understanding that he made some accusations?

A. Yes, I did.

Q. Since—you have been in jail here quite a while have you not?

A. That is right.

Mr. Kirkland: Your Honor, I object to that. However, I request the right to bring forth why he has been in jail so long if counsel wants to go into—

Mr. Shaw: I withdraw the question, your honor.

Q. Have you been in jail with Mr. Glasscock?

A. Yes, I have.

Q. Did you ever have any conversations with him in the jail?

A. Oh, just possibly talking to him in the middle of the floor [100] or something like that, very few.

Q. Did you ever have any such conversation as he stated on the witness stand yesterday?

(Testimony of Theodore Roosevelt Glenn.)

A. I beg your pardon?

Q. Did you have such a conversation as he described on the witness stand?

A. Absolutely not.

Mr. Kirkland: Objection, your honor. The defendant stated he didn't hear all of it.

The Court: He was evidently told. It would not make it improper to ask him.

A. I heard that.

The Court: The question whether he had such a conversation even though he was told what the conversation was would be proper.

Mr. Kirkland: The defendant on the stand stated that he did not hear all of the conversation and then the counsel asked him if he had any such conversation about this and he said absolutely not.

Mr. Shaw: Any such conversation as what the witness heard.

Mr. Kirkland: Maybe we should establish what the witness heard.

The Court: No, I think he could come right out and say he was told Glasscock testified to so and so. Is that true? [101] Nothing wrong with a question of that kind.

Mr. Kirkland: I agree with his honor if Glasscock said so and so, is that true. He said, did you have any such conversation? He said, no.

The Court: I understand. It is a rather technical point. You can bring that out in cross examination. It is not a basis for objection now.

Q. (By Mr. Shaw): Now, Mr. Glasscock yes-

(Testimony of Theodore Roosevelt Glenn.)

terday said you admitted to him that you had sexual intercourse with Eva Nickita and that you put your tongue on her private parts and as far as I recall that you took the back road or words to that effect. Did any conversation such as that take place? A. Absolutely not.

Q. Did you ever talk to Glasscock about any of those things? A. No.

Q. Did you make—Glasscock also testified, according to my memory yesterday, that you made him a proposition over in the Federal jail. I believe the words he used was you asked him if he would go down on you, did any such conversation as that ever take place? A. Absolutely not.

Q. Do you ever remember while in jail having any private conversations with Glasscock?

A. No.

Q. Between you and him? [102] A. No.

Q. Mr. Glasscock also stated, if I remember correctly, that you told him that Eva was 14 years old. At the time he said you made these other statements did you ever state that?

A. I didn't say that and I couldn't because I didn't know for sure.

Mr. Shaw: Your witness.

Cross Examination

By Mr. Kirkland:

Q. Mr. Glenn, did you state that you did not slap Eva Nickita? A. That is right.

Q. Did you ever make a statement? Did you

(Testimony of Theodore Roosevelt Glenn.)

make the statement to Mr. Jack Jenkins of the Alaskan Native Service and the Deputy Marshal, Oscar Olson, that you did slap her?

A. Not that I know of—that I remember of.

Q. Did you make a statement to that effect?

A. No.

The Court: You should call his attention to the time, place and circumstances.

Q. (By Mr. Kirkland): That was immediately after your arrest and while being taken over to the Federal jail—to be more specific, on the way in from Palmer to the Federal jail? [103]

A. I beg your pardon?

Q. To be more specific, did you make that statement on the way in from Palmer to the Federal jail here at Anchorage in the company of Jack Jenkins and the Deputy Marshal, Oscar Olson?

A. If I made such a statement I don't remember saying it.

Q. Were you drunk the night you went to Eva Nickita's house? A. No.

Q. Did you make a statement to Jack Jenkins of the Alaskan Native Service and the Deputy Marshal, Oscar Olson, on the way from Palmer to the Federal jail here in Anchorage that you would not have done this unless you were drunk?

A. I did not.

Mr. Butcher: Done what? Specify it.

The Court: I think you ought to call to his attention the entire conversation and the exact

(Testimony of Theodore Roosevelt Glenn.)

words in which it was told. The law entitles him to having his attention called to it in that manner.

Q. (By Mr. Kirkland): Did you make the statement to the Deputy Marshal, Oscar Olson, and Jack Jenkins of the Alaskan Native Service on your trip from Palmer to the Federal jail in Anchorage that you would not have been involved with this girl, that you would not have been connected with her in any way if you had not been drunk the night you went to her house? A. I did not.

Q. While in the Federal jail, incarcerated along with David [104] Glasscock, did you make the statement to him that you intended to buy the testimony of your wife in this case and that you had changed your mind because your wife wrote you—

Mr. Butcher: Your Honor, just a moment, objection—have the courtesy to stop when I object. Your honor, Glasscock testified to no such conversation that he intended to buy the testimony of his wife.

The Court: He would not have to. He can lay a foundation for his impeachment by asking him if he had such and such a conversation.

Mr. Butcher: This is cross examination.

The Court: But he can lay the foundation for his impeachment.

Mr. Butcher: Beyond the scope of the direct examination.

The Court: Never beyond the scope of an examination to lay the foundation for impeachment—not subject to that limitation. But let me suggest

(Testimony of Theodore Roosevelt Glenn.)

that questions of that kind should be put in the first, rather than the third, person.

Mr. Kirkland: I beg your pardon?

The Court: Questions of that kind should be put in the first rather than the third person, that is, when you refer to what was said. In other words, it should be in the exact words that he is supposed to have made this statement and not in the third person. The reason for that is it is much more likely [105] to call it to the attention of the witness.

Mr. Kirkland: Yes, sir.

The Court: Now, if you can't state it verbatim, then of course you may state it in substance and effect.

Mr. Kirkland: Your honor, I will proceed to ask the question in this way:

Q. Mr. Glenn, did you make the statement to David Glasscock, while incarcerated at the Federal jail here in Anchorage, that yourself and your attorneys, Harold Butcher and Mr. Shaw, planned to call your ex-wife and that you were going to buy her testimony in your favor?

Mr. Butcher: Now, your honor——

Q. (continuing): and did you further state to the defendant, Glasscock—to the prisoner Glasscock that at one time she had agreed to this plan but that since that time she had changed her mind and said she would hang you?

A. That is the first I have heard of it.

Mr. Butcher: Don't answer the question. Your honor, there has been no testimony in this case

(Testimony of Theodore Roosevelt Glenn.)

whatsoever that his wife was present at any of the incidents that occurred; no witness has so testified. As a matter of fact, he knows that the wife was out during this period.

The Court: The truth of it is immaterial whether he said it.

Mr. Butcher: It must relate to the case, your honor, [106] how can it possibly relate to the case.

The Court: Well, it does relate to the case. All that it needs to tend to show is that there was consciousness of guilt or conduct inconsistent with innocence and it makes no difference whether what he said in any conversation is true or whether it was wholly made up.

Mr. Butcher: Well, guilt in some other matter or in this matter?

The Court: In this matter, of course.

Mr. Butcher: You are referring to statements on this case?

Mr. Kirkland: I am referring to testimony in this case.

Mr. Butcher: This case?

Mr. Kirkland: As far as I know—this case. Your honor, even if it were to another case, I don't know which one he was exactly referring to. It would certainly go to the defendant's character.

The Court: Statements of that kind can only be shown if they can reasonably be said to be inconsistent with innocence or to show a consciousness of guilt and not for the purpose of showing char-

(Testimony of Theodore Roosevelt Glenn.)

acter. You may answer the question. (Repeated)
You may answer the question.

A. It is the first I ever heard of it. I didn't make that statement. [107]

Q. (By Mr. Kirkland): Mr. Glenn, did you ever—did you make the statement to David C. Glasscock, while you were incarcerated in the Federal jail here at Anchorage along with Mr. Glasscock, to the effect of that there was an old lady, an old grandma, that you referred to her as old grandma, that she was an elderly woman, approximately 85 years of age, stopped by your house one day.

Mr. Butcher: Your honor, unless the counsel can show that this is connected with this case in any manner at all I object to the question. It is wholly irrelevant. It can't prove anything in this case.

The Court: Counsel should know it must be connected with this case in some way. I, of course, have no way of knowing what is in his mind.

Mr. Kirkland: Your honor, I certainly feel that it is connected with this case. Could I make an offer of proof?

The Court: Well, is it an offer that may be made in the presence of the jury?

Mr. Kirkland: No, sir. Well, your honor—

The Court: I think counsel better approach the bench and you can state then what you propose to prove.

(Thereupon, counsel for the plaintiff and the defendant approached the bench and the proceedings were out of the hearing of the jury, and without the reporter.) [108]

(Thereupon, when the discussion was completed, counsel for the plaintiff and defendant resumed their seats and the following proceedings were had in the presence of the court and jury.)

Mr. Kirkland: No further questions.

(Thereupon, the witness was excused and retired from the witness stand, resuming his seat at the counsel table.)

Mr. Butcher: If your honor please, Mr. Shaw informs me we had a witness in the hallway a few moments ago and he assumed that Mr. Glenn's cross examination would consume the period until the noon hour and—

The Court: Are you through with him now?

Mr. Butcher: Yes, your honor. Mr. Shaw told him to return at 2:00 o'clock so if the court please we would like at this time to adjourn 15 minutes early and readjourn at 2:00 o'clock.

Mr. Kirkland: Your honor, I would be very agreeable. I am very anxious to have that witness take the stand.

The Court: I thought you meant you were agreeable to recessing.

Mr. Kirkland: Yes, yes, sir, I am very agreeable to taking a recess because I want that witness to get on the stand.

Mr. Butcher: That has nothing to do with your consent to take a recess. [109]

The Court: Well, is that the last witness?

Mr. Butcher: There will be a couple of character witnesses, your honor, and we will then rest.

The Court: Well, I have a matter set for 3:30 which I set not long ago thinking that we might conclude by that time. We should start in earlier perhaps than 2:00.

Mr. Butcher: If your honor will give me an opportunity to look out in the hall it is possible he may not have left.

The Court: Very well, ladies and gentlemen of the jury, the case will be resumed at 1:45. The court, however, will convene for other business at 1:30, so you should be back in the jury box at 1:45. Recess to 1:30.

(Whereupon, at 11:42 a.m., September 24, 1953, the court continues the cause to 1:45 o'clock p.m. of the same day.)

(At 1:55 o'clock p.m., September 24, 1953, counsel for plaintiff being present and defendant being present in person and by his counsel, the trial of said cause was resumed:)

The Court: It has been necessary to excuse the juror Mrs. Reekie. There is a certificate of her physician on file here if counsel wish to examine it.

Mr. Butcher: That is according to our stipulation, [110] your honor.

Mr. Shaw: Call Mr. Ray Lancaster.

RAY LANCASTER

called as a witness on behalf of the defendant, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Shaw:

Q. Will you state your name and your place of residence, please?

A. Ray Lancaster, Palmer, Alaska. L-a-n-c-a-s-t-e-r.

Q. How long have you lived at Palmer, Mr. Lancaster?

A. Ever since '47 or '46 in and around Palmer and been there since '47 in Palmer.

Q. What is your occupation?

A. Carpenter.

Q. Are you acquainted with the defendant, Ted Glenn? A. I am.

Q. And how long have you known Mr. Glenn?

A. Since the first part of '47, sometime in the first half of the year '47, either March or April, or somewhere in there. I wouldn't know the exact month.

Q. How well have you known him?

A. I have worked with him through several different times on jobs along in '48, '49, '50. [111]

Q. Then you are well acquainted with him?

A. Well, yes, as to that effect I am.

Q. Are you familiar with the general reputation of Mr. Glenn in the Palmer community for his truth and veracity? A. Yes.

Q. And what is that general reputation?

(Testimony of Ray Lancaster.)

A. Well, it is good.

Q. Are you acquainted with Mr. Glenn's reputation in the Palmer community or wherever you have known him as to his moral character, his morals?

The Court: I think that I permitted the first question to go by but the reputation that may be evidence of reputation that is admissible in this case must be evidence relating to the traits of character involved in the charge, not as to moral character, not as to truth or veracity. You may ask him what his reputation is as a law-abiding citizen.

Q. (By Mr. Shaw): What is, if you know, Mr. Glenn's reputation as a law-abiding citizen?

A. Well, to my knowledge it is good, okay to my knowledge.

Mr. Kirkland: Your honor, I think counsel should rephrase his question as it is improper.

The Court: I can't give an instruction on it because it is based on his personal knowledge.

Mr. Shaw: That is all.

The Court: Well, the evidence will have to be stricken. [112]

Mr. Shaw: I misunderstood your honor.

The Court: The reputation consists of what people say about somebody, not a witness' personal knowledge. If he can testify as to the reputation of the defendant, it will have to be based on what the people of Palmer generally say about his being a law-abiding citizen and not what he thinks.

(Testimony of Ray Lancaster.)

Mr. Shaw: I thought I had the question phrased—

The Court: No, you did not.

Mr. Shaw: (continuing) that way.

Q. If you know, what is the reputation among the people of Palmer of Mr. Glenn as a law-abiding citizen?

The Court: You can answer that question if you know what it is. First answer: Do you know what it is? Do you know what his reputation is in Palmer and vicinity as a law-abiding citizen?

A. Well, the only way I can answer that as far as I am concerned to my own knowledge, what I know.

The Court: I understand that.

A. But I can't answer it that I went out and asked everybody as far as that part of it goes. It is my own knowledge, like personal knowledge, but from what I know or what other people had said is the only way I can form my opinion—not my opinion but my answer.

Q. (By Mr. Shaw): From the time you first knew Mr. Glenn until November of 1950, the time involved in this crime, would you say [113] his reputation in the community of Palmer among the people and the Matanuska Valley, would you say it was good or bad?

A. Well, I would still say it was good.

Mr. Shaw: That is all.

(Testimony of Ray Lancaster.)

Cross Examination

By Mr. Kirkland:

Q. Well, is that based on what people have told you or based on your personal knowledge?

A. On my observation and what people has said or told me.

Q. Mr. Lancaster, have you ever heard of Mr. Glenn bragging about making the most of the native girls in and about Palmer?

Mr. Butcher: Your honor, that is an improper question.

The Court: Objection overruled.

A. I have not.

Q. (By Mr. Kirkland): Well, then, if—have you ever heard him bragging among the community about making some of the native girls around Palmer? A. I have not.

Mr. Kirkland: That is all.

Mr. Shaw: That is all.

(Thereupon, the witness was excused and retired from the witness stand.) [114]

Mr. Shaw: The defense rests, your honor.

The Court: Have you any rebuttal?

Mr. Kirkland: Yes, your honor.

The Court: You may call your witness.

Mr. Kirkland: Your honor, I would like to call Mr. Jack Jenkins. I believe he is in my office.

The Court: No, he is here.

JACK JENKINS

resumed the witness stand as a witness on rebuttal for the plaintiff, and having previously been sworn, testifies as follows on

Direct Examination

By Mr. Kirkland:

Q. Mr. Jenkins, when you brought the defendant in this case, Mr. Glenn, from Palmer to Anchorage and you arrived here at the Federal jail did the defendant make a statement to you to the effect that he was—would not have been involved with this young girl, Eva Nickita, if he had not been drinking and was drunk? A. He did.

Q. Did the defendant in this case at the same time make a statement to you to the effect that he had had to slap this young girl, Eva Nickita?

A. He did. [115]

Q. Mr. Jenkins, how long have you been acquainted with the defendant in this case, Mr. Glenn?

Mr. Butcher: Now, your honor, counsel just put the questions—the impeaching questions and they have been answered, which is the purpose of calling this witness in rebuttal. Counsel directed to Mr. Glenn on cross examination two questions: Did you at such and such a time from Palmer to Anchorage and the Federal Jail make such and such a statement about intoxication. The second question was about slapping. He has covered those two. He has put the questions to the witness. Now he is going to find out how long the defendant has known

(Testimony of Jack Jenkins.)

Mr. Glenn, which has nothing to do with the rebuttal or the impeaching of the witness.

The Court: I took it for granted that he was going to ask him about the defendant's reputation which would be rebuttal.

Mr. Kirkland: Correct, your honor.

The Court: You may ask him.

A. I first contacted Mr. Glenn approximately two years back.

Q. And you are the investigator for the Alaskan Native Service? A. That is correct.

Q. And you are familiar with Palmer and the citizens of Palmer and know numerous of the citizens of Palmer? A. Yes, sir. [116]

Q. Now, what do you know of Mr. Glenn's general reputation in Palmer to be?

The Court: Well, for what, general reputation for what?

Mr. Kirkland: As a law-abiding citizen.

Mr. Butcher: In objecting this witness has not testified that he is a resident of that area in which the reputation of the defendant—in which he might have such a reputation. He is simply an investigator for the Native Service and made a trip to Palmer, Alaska. Now, you certainly do not reside in the area and you would not be acquainted with the general reputation.

The Court: You can cross examine him but it is not a prerequisite that he reside in the same vicinity. Objection overruled.

(Testimony of Jack Jenkins.)

A. Would you mind rephrasing your question, please?

Q. (By Mr. Kirkland): What do you know about the defendant's general reputation in the Palmer area as to being a law-abiding citizen?

A. It is very poor.

Mr. Kirkland: That is all. Your witness.

Mr. Butcher: Now I ask that answer be stricken, your honor, because no proper foundation was laid. The question should have been put: Do you know the general reputation and if you do, what is it?

The Court: Well, that was asked in the previous question.

Mr. Butcher: He asked him what the general reputation was without ascertaining——

The Court: In the last question but previously he asked him if he knew what the general reputation of the defendant in Palmer or vicinity was. So the motion is denied.

Cross Examination

By Mr. Butcher:

Q. Do you know of any act of violation of the law committed by Mr. Glenn other than the one he is charged here with? A. Yes, sir.

Q. Do you know whether he has been convicted previously?

A. Excuse me, Attorney Butcher, you mean do I know of a previous conviction?

Q. Yes. A. No, sir.

Q. Do you know of any violation of the law

(Testimony of Jack Jenkins.)

of which he has been convicted of any kind anywhere? A. No, sir.

Mr. Butcher: That is all.

(Thereupon, the witness was excused and retired from [118] the witness stand.)

Mr. Kirkland: I would like to call Deputy Marshal Oscar Olson.

OSCAR OLSON

called as a witness on behalf of the plaintiff on rebuttal, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Kirkland:

Q. Will you state your name, please, sir?

A. Oscar Olson.

Q. And what is your occupation?

A. Deputy U. S. Marshal.

Q. And how long have you been a Deputy U. S. Marshal? A. 1933.

Q. And then you were naturally a deputy marshal during the years 1950, '51, '52?

A. I was.

Q. Mr. Olson, did you accompany Mr. Jack Jenkins in bringing the defendant, Mr. Glenn, from Palmer to the Federal jail here at Anchorage and have a conversation during that ride and after your arrival here? A. I did.

Q. Did you hear the defendant Theodore Roosevelt Glenn make a [119] statement to the effect that he would not have been involved with this

(Testimony of Oscar Olson.)

young girl, Eva Nickita, if he had not been drinking or was drunk? A. He did.

Q. You heard him make that statement?

A. Positive.

Q. Did you hear the defendant at the same time make a statement that he had slapped this young girl? A. He did.

Mr. Kirkland: Your witness.

Mr. Butcher: No cross.

(Thereupon, the witness was excused and retired from the witness stand.)

Mr. Kirkland: I would like to call David Glasscock back to the witness stand, your honor.

DAVID C. GLASSCOCK

resumed the witness stand as a witness on behalf of the plaintiff in rebuttal, and having previously been sworn, testifies as follows on

Direct Examination

By Mr. Kirkland:

Q. Mr. Glasscock, did the defendant in this case, while you were incarcerated at the Federal jail, ever make a statement to you that he had had intercourse with most of the natives in and [120] around the Palmer area? A. Yes, sir.

Mr. Kirkland: Your witness.

Mr. Butcher: Your honor, it is my recollection that your honor sustained the objection to that question on the grounds that it was regarding other crimes, not relating to this, other offenses.

(Testimony of David C. Glascock.)

The Court: I do not remember whether I ruled on anything like that but I think it is improper. You move to strike it?

Mr. Butcher: I move to strike it, yes.

Mr. Kirkland: Your honor, I feel as though the question is proper due to the fact that as a character witness I asked him if he had ever heard of the defendant bragging about such things as the character witness on behalf of Mr. Glenn says no.

The Court: Well, that would not prove that the character witness had heard of those things because this person had heard of them. The motion is granted and the jury is instructed to disregard the present witness' testimony.

Q. (By Mr. Kirkland): At the time of your incarceration in the Federal jail here in Anchorage along with the defendant in this case, did he ever make the statement to you that he had slapped Eva Nickita? A. Yes, sir. [121]

Mr. Kirkland: Your witness.

Mr. Butcher: Your honor, I must depend upon my recollection but I have had it verified just a moment ago—it is my recollection that this question as to this slapping of Eva Nickita was never put to this witness or to Mr. Glenn on the witness stand. Now, in cross examination Mr. Glenn testified that he had never told Jack Jenkins, never told Oscar Olson that he had slapped Eva Nickita. The question was not put to him as to whether or not he ever told Mr. Glascock and if that is—if my rec-

(Testimony of David C. Glascock.)

ollection is correct, then that question put to this witness is not proper rebuttal.

The Court: My recollection is that he was specifically asked whether he ever slapped her.

Mr. Butcher: He was specifically asked if he ever slapped but the impeaching question was as to whether or not he told this witness that he slapped Eva Nickita.

The Court: It is not an impeaching question; it is merely contradiction.

Mr. Butcher: That is all. I have no cross.

(Thereupon, the witness was excused and retired from the witness stand.)

The Court: Have you any other witnesses?

Mr. Kirkland: Your honor, after some of the court's rulings I wonder if I could offer testimony as to the complaining witness' good character? [122]

The Court: I do not think that there is any—I do not think the situation is one to make it necessary. There has been no evidence expressly attacking her character.

Mr. Kirkland: Other than what has been stricken.

The Court: Other than what?

Mr. Kirkland: There has been some that has been stricken.

The Court: In every case there are contradictions of witnesses and even something perhaps derogatory of her but that does not open the gate for the introduction of reputation evidence for the purpose of rehabilitation.

Mr. Kirkland: I have no further rebuttal then.

The Court: Any surrebuttal?

Mr. Butcher: No surrebuttal.

The Court: You may proceed to argue the case. Counsel will be limited to half an hour for each party.

Mr. Kirkland: Does his honor mean a half hour all told?

The Court: Yes; you think that is too short?

Mr. Kirkland: Yes, sir.

The Court: Well, an hour is the limit permitted by the rules in a case that was a good deal longer than this—only a few hours testimony in this case.

Mr. Kirkland: Mr. Shaw, Mr. Butcher, Judge Folta, ladies and gentlemen of the jury, you will remember from my [123] opening statement I said that I was certain that after you heard the evidence you would return a verdict of guilty. Now, we shall sum up the testimony of the various witnesses in this case.

First, the complaining witness and victim, Miss Nickita took the stand. Now, I had some difficulty eliciting information from her and I think all of you know why and I think that everyone of you finally understood what her testimony was and no doubt in your mind. She testified that the defendant in this case came to her residence where she was staying with her—I believe it was Aunt Minnie Nelson. She referred to her as Aunt Minnie, who was the third cousin of a second cousin of hers, I believe, or something of that nature. She testified that she was reluctant to go. She did not want to go but that they told her to go and that she went;

that upon arriving at Palmer at the defendant's house that shortly thereafter they went to bed; that the defendant got on top of her; that he put his tongue on the private parts of her body; that he then told her to get around to the rear. Now, it seems as though people had a hard time understanding what they meant by the rear and this young girl had to get up and point and I think she definitely pointed to what took place there and testified as to what happened then.

The next witness who took the stand was Mr. Glasscock. Testifying in behalf of the Government he testified that while [124] incarcerated in the Federal jail that the defendant stated to him that he had had intercourse with her in the anus, the front and that he had eaten it and that that was the best part. That is what the defendant in this case stated to the witness Glasscock.

The next witness that appeared was Mrs. Minnie Nelson. She could not remember all the convictions she has had.

Then the defendant took the stand and he denied all of what that statement was. Now, the court will instruct you that you have the right to look at this evidence and you can take into consideration as to who has the most interest in the outcome of this trial. Now, who do you think has the most interest in the outcome of this trial? Miss Eva Nickita, Mr. Glasscock or Mr. Glenn? The defendant. The defendant made denials, said that he did none of this other than take her to his house as a house-keeper and that he did nothing but have a little

intercourse with her, nothing further. He stated that he was not drinking that night; that he had never slapped her but you certainly heard testimony which is contradictory to that. You heard the testimony of the character witnesses that the defendant put on before you—one character witness anyway and I frankly do not see how you can have any doubts in your mind as to the guilt of the defendant, Theodore Roosevelt Glenn in this case.

Mr. Shaw: Your honor, Mr. Kirkland, ladies and [125] gentlemen of the jury, Eva Nickita, to refer to her testimony, the girl who admitted that she was 19 years of age, in whose case further testimony about her age was not entered, has admitted to you that she went to Mr. Glenn's home and lived with him there. She testified that in regard to the matter of sex the first thing that took place was normal or natural sexual intercourse. Then she alleges that these other things took place. It was not until two years after this crime is alleged to have been committed that the prosecutrix here made her complaint—for two years she remained silent. I think that that is a very pertinent and significant point for this jury to consider in arriving at a verdict.

You have heard the testimony of Mr. Glenn and Miss Nickita both on this point and I think there is no doubt that during the three weeks or a month that this girl lived in his home and when Mr. Glenn was feeding her and taking care of her that she was free to come and go as she pleased. He was away at work a large part of the time. In fact,

most of the time and she stayed there; there was no question she could have left at any time, no evidence but what Mr. Glenn treated her with the greatest of kindness. If you will recall the testimony of Minnie Nelson, the native woman, when the girl came home she was wearing a ring and she seemed happy to have been at Mr. Glenn's place and quoted a conversation between him and her as to her going back there. Mr. Glenn is a successful farmer in [126] the Matanuska Valley and a carpenter. You heard Mr. Lancaster there who is also a carpenter in Matanuska testify that his reputation is good. You heard Mr. Jenkins on the witness stand. Though he testified that his character was poor Mr. Jenkins is not a resident of the Palmer area and Mr. Jenkins admitted that he knew of no crime of which Mr. Glenn has ever been convicted. I would like to impress upon you the testimony of Mr. Glenn where he told you that he has lived in Alaska since 1939. That is 15 years. That he was a married man for 19 years. That he and his wife had two adopted native children. There was a divorce all right not so very long before this alleged crime took place and the wife took the children but for 19 years he was a family man with a wife and, in more recent years, the native children. It does not make sense that a man, a family man like that, the man you have seen on the witness stand—you have heard his testimony. It is clear to see what kind of a straightforward witness he has made. I think it should be clear that he is not capable of committing this kind of a crime.

In regard to the witness Glasscock, he is a convict. The prosecution has brought him up from the penitentiary here to testify. That is something that often happens in criminal cases. I think he was a poor miserable creature on the witness stand there. What has he to lose by coming up here to testify to anything like this? He might have something to gain. What I do not know but he certainly has nothing to lose. What could [127] be his motive in telling such a story? Along that line it is common knowledge that the Anchorage jail over here is one large room and that it is full all the time; it is common knowledge and I invite your attention to that and ask that you bear that in mind that with a jail full of prisoners how could such an act as Mr. Glenn is alleged to have solicited with this man Glasscock have taken place in that large one-room jail full of prisoners—30 to 60 prisoners in there sometimes.

Also remember the testimony of Miss Nickita in which she admitted she had written Mr. Glenn a letter demanding money from Mr. Glenn. Also Mr. Glenn testified to the same thing that he had received such a letter sometime after she had stayed at his place. I think that is a significant thing. Bear in mind here is a native girl who voluntarily goes and lives at a man's home, who goes away, goes back to Eklutna, saying that she liked him; she was happy there and who then later writes him a threatening letter demanding money and who two years later brings these charges, alleging the most difficult type of a crime to handle in a

court of law—most difficult case. We are all aware of the embarrassing problems involved in a case of this kind, a case where it is the word of the prosecutrix against the defendant—her word against his. The jury has to believe one or the other and the man's liberty depends on that.

Now the court will instruct you on the law of reasonable [128] doubt and it will go something like this: That you must find upon the evidence to convict that the defendant is guilty beyond any reasonable doubt. The presumption of innocence goes with the defendant as a cloak until he is found guilty upon the evidence beyond any reasonable doubt and I know that you ladies and gentlemen of the jury will carefully weigh the evidence in this case, will consider the terrible position that the defendant is put in defending himself against the word of one person who says he committed a crime which he says he did not commit.

Thank you.

Mr. Butcher: Your honor, Mr. Kirkland, ladies and gentlemen of the jury, it has been necessary and regrettably so that you have been exposed to considerable sordid details in connection with the alleged crime. It was necessary ladies and gentlemen because the appetites and the functions of the human body are well known to all of us. Some of the things in connection with the human body we publicly set aside and put behind a screen, although we are all aware of them we do not talk about them. But in circumstances of this nature where a crime is alleged to have been committed it is neces-

sary to go into the greatest detail and it is embarrassing to you as jurors; it is embarrassing to counsel and to the court, I am sure, to have to expose in public things of this nature which normally are not mentioned and which we consider as unmentionable among decent people. [129]

The witnesses—their testimony has been before you; you are capable of judging as well as any one. I do not intend to rehash that testimony. I point out to you only that Mr. Glenn frankly, candidly admitted that he was lonely; he wanted a housekeeper and he wanted a companion and that friends solicited for him a native girl to come and live with him and he testified that he went with his friends to the Eklutna Village, to the home of one Minnie Nelson and there arrangements were made for a native girl to come and be his housekeeper. He testified that he was kind to her; he testified that he had considerable intercourse with her. Now, ladies and gentlemen, you are all experienced in this world and things are certainly apparent to you. There are forms of perversion which certainly you are familiar with and have observed in people before. It is most unusual for the person to seek sexual satisfaction in a normal way and then seek sexual satisfaction in some abnormal way. There are abnormal people in the world who find satisfaction for their sexual senses by seeking abnormal outlets and, as a matter of fact, that is the only way they can find sexual satisfaction—in the abnormal way—either with man with man and with woman with man and it is a perverted form. It is

not unusual and does not fit in with the character of the persons who are afflicted with the abnormality to seek normal sex.

Now, the witness, Mr. Glenn, has testified that he did have carnal intercourse with her and if he did it is a terrible [130] thing. I do not attempt to condone him or justify him at all but it is a satisfaction to human appetite that we in Alaska have observed and have known of in thousands of instances and where men have taken native wives and lived with them and raised fine families without a marriage ceremony. Perhaps in frontier countries elsewhere in the early days of the United States it has occurred. I do not attempt to condone that. I pointed out that he was certainly guilty of illegal cohabitation. We find the young girl testifying that she went against her will. That is easy to say now that she is no longer with Mr. Glenn; there are certain aspects of the testimony, however, that are important to note: That she went elsewhere and obtained the—as near as I could understand from her difficult method of expression was that she went to her sister's house and got her suitcase and put her belongings into it. I could be wrong about that. I thought she said that but as I pressed the question it may be that she said she got the suitcase from Minnie's house. She got the suitcase and took her belongings with her. She testified that she went because she was told to go; she didn't testify that anyone coerced her into going. No one twisted her arm or forced her into the car. Her Aunt went with her—her closest relative that has

appeared in this case, although there has been indirect evidence here that she had other sisters or brothers—in any event a relative went with her as far as Palmer and consented to her going to be Mr. [131] Glenn's woman or his housekeeper.

Now, certainly the complaining witness, Eva Nickita, has after two and a half years come into court and told this story to you. She did not tell this story to anyone at the time and when she returned to the Village at Eklutna——

Mr. Kirkland: I object to this at this point—there is no evidence that she told any one at the time or not.

Mr. Butcher: Well, it is true, there is no evidence before this court. That is my statement.

The Court: It is in negative form, no evidence of that kind so it is not improper.

Mr. Butcher: There is no evidence before this court that she told anyone for a period of approximately two years but we do have now. She is the complaining witness and Mr. Glenn is the defendant. Of course, they both have their interests to be served here in the court but the relative Minnie, an old native woman—of course she has been arrested for drunkenness; many people have been arrested for drunkenness and many natives. It is a great sin and a curse and a blot upon the people of Alaska and upon our communities that we expose our natives to such a thing. We know, as women and men in this community that that does happen, that natives get liquor and cannot handle liquor like the brothers and sisters in the white

race handle it. It is a shame that it exists and something should be done about it. Nothing ever will, at least [132] under our present system. We know it happens; you have seen it in everyday life. Sure the old lady has been arrested and convicted of drunkenness but that does not affect her ability to sit up on this stand and tell the truth. Why should she do other than tell the truth? There is no reason why she should come into court and tell this story against the interests of her relative and for Mr. Glenn other than it is true. She said that Eva came back and displayed a wedding ring or a ring and that she stated that Mr. Glenn had gone outside to visit his mother who was dying and that he was going to come back and she was going to live him him. She didn't tell any part of the story about mistreatment; didn't tell anything about abnormal relations to this old lady and sometime after this she goes elsewhere and lives. She admitted on the witness stand, ladies and gentlemen—and this is important—that she wrote a letter to Mr. Glenn. She wasn't finished with him yet. She wrote a letter to him and told him that she wanted some money and that if she didn't get the money or he didn't send it to her she would cause him some trouble. Now, that is a form of blackmail. Mr. Glenn did not respond to that threat of blackmail; he ignored it and perhaps the fact that he ignored it resulted in his being in court today. I do not know. I do not know the answers to those things and I am simply pointing them out to you myself. Miss Nickita, prior to telling anyone about her story,

about any mistreatment, attempted to extract some [133] money illegally from Mr. Glenn. The amount of money is insignificant. It may have been a great sum to this girl. This girl was either 16 or 17 years of age and that is uncertain. She testified that she is 19 now, although she did not say when her birthday was. If her birthday was sometime in the past she was probably 17 at this time, which is maturity in almost any person. Many people of our own race have married as early as 15. For purposes of illustration I mention the history or that I was reading just recently a diary of an old woman who stated when she was 15 years of age she longed for her own cabin and her own homestead and so could have her own family and she married at 15 and we know from our common knowledge that that has often happened. I believe within our own knowledge and observation that native girls mature earlier than girls of our own race and certainly at the age of 17 the girl knew what she was doing and was willing to do it and when it did not turn out the way she expected or for some reason known only to her she has brought the accusations into the court.

Now, as to the proof itself, there is no question that through the leading questions that counsel was permitted to ask of this young girl she did certainly set forth the fact that Mr. Glenn placed his mouth upon her private parts and I think there was no doubt about that testimony so far as it went, if it were true, but there is a considerable lack of proof as to the crime alleged in Count III of the

indictment, which you will have [134] in your possession in the jury room. In this count, as you will recall and as you will know when you read it again, Mr. Glenn is accused of putting his penis into her anus and the only testimony we have now—understand ladies and gentlemen, you have taken the most sacred oath which you can, sitting in judgment on your fellowmen, to examine the evidence. If you find evidence sufficient to convict on any one of these counts it is your duty to convict. Now, is there enough evidence in connection with the crime of sodomy, that is, that he put his penis into her anus. It was with great difficulty that counsel was able to extract the story from her. Finally she said that he went to the back. Now she did not say he put his penis into her anus and she said he went on the back and pointed to the buttock and stood sideways when she did it and she pointed about that far. (indicating) Ladies and gentlemen, there is not a scintilla of evidence that he penetrated the anus; that he put his penis in the anus. In connection with Count III I ask you to observe that. It is your right to observe it and if you think about it, if necessary to reconsider the evidence on that particular question.

I candidly admit, if it is true, that in Count II, if she is telling a true story that there is sufficient evidence there but not in Count III.

Ladies and gentlemen, just one more reference to the testimony of Mr. Jenkins. Mr. Jenkins took the stand and very [135] readily upon suggestion by counsel said that Mr. Glenn's reputation as a

law-abiding citizen in Palmer was poor. He said it was poor, yet he was unable to give a single example of where Mr. Glenn had been convicted of a crime and now, how can we judge whether a person's reputation is poor unless we know they have been convicted of a crime. He knew of none so he was ready and willing to expose to you ladies and gentlemen the worst possible picture in an effort to obtain a conviction.

Now, in closing I can only ask you to compare the evidence. Now, understand that Mr. Glenn is charged with the most serious crime and the proof of it lies on the lips of a girl who at least—and this is within the ability of the jury to observe—at least on the indictment itself, which will be in your presence, there is an inconsistency in the age and also that she admitted on cross examination that she tried to extract money from him and told told him she would get him in trouble. She waits two years and then when the detective, the investigator for the Alaskan Native Service gets hold of her this thing comes to light. Why I do not know. Consider the seriousness. Here is a man who if convicted of this crime will be sentenced and he will be sentenced on the words of a young girl whose mental ability, as displayed upon the witness stand, is very low, very low indeed—19 years of age now—a young woman, mature in every way except mentally, unable to express herself, unable to answer straightforward questions, unable to give facts [136] of any kind but perhaps one who has a vivid imagination and susceptible to sugges-

tion. As you will recall she testified that Mr. Jenkins for the first time before Dorothy Saxton, the Commissioner, put these questions to her and was always ready, willing and able to answer the questions. Now, the case is yours. I am sure any verdict you arrive at in reporting to this courtroom will be a just verdict. I have no doubt about that. I only ask you to consider the seriousness of the charge and the correctness of the testimony and the type of the testimony.

Mr. Shaw very ably analyzed this testimony and I have not mentioned Mr. Glascock previously because I consider the man a miserable character. I would consider that his testimony was not worth belief. It just does not make sense that the defendant would go and tell somebody of these things he did when he is in the jail awaiting the charge and particularly to tell that the girl was 14 years of age when it is to his every interest that she be more mature and older. Does that make sense? Would any sensible person do it? Didn't Mr. Glenn impress you as one possessed of reasonable intelligence. Ladies and gentlemen, that was made up from whole cloth, in my opinion, to serve some interest that Mr. Glascock has and is not worthy of belief. Ladies and gentlemen, I rest the case with you with those brief words and trust you will be able to recollect the testimony and do justice in this case as you see fit.

Thank you. [137]

Mr. Kirkland: Your honor, Mr. Shaw, Mr. Butcher, ladies and gentlemen of the jury, now, let's

sum up what Mr. Shaw said in his statement. He said that this young girl was free to come and go. Now, how free would a 16-year-old native girl out on a farm with no place to go be—how free would she be to come and go with no more education than this young girl has and no more intelligence. Then he makes the story about the defendant feeding her, taking care of her and how he came to get her as he wanted a housekeeper. Now, if the defendant wanted a housekeeper and he testified himself that she didn't do any work around there. Also, he said that after three weeks of keeping her when he had to leave he made arrangements to take her back. Now did he want a housekeeper or what did he want? When he testified that she didn't do any work around there it is pretty obvious what he wanted. Then Mr. Shaw was talking about the witness Minnie. Now, let's stop and just consider what Mrs. Nelson testified to. You will remember on the witness stand she testified that first when the defendant Glenn arrived and the rest of his party that they were all in bed. You remember that, were all in bed. And then the next thing you know, he says that Eva was up and had her clothes on when they got there and go off and then on top of that the defendant Glenn takes the stand and says he heard Minnie say to Eva, get up and put your clothes on; we don't want you here. That is the defendant's own testimony as to what he heard said and yet [138] what choice did this girl have? She didn't have her parents; she was with a second cousin of a third cousin, or whatever the relation-

ship was. She didn't want her. Where could she go? They tell her to get up and put your clothes on. We don't want you here. Mrs. Nelson says they were not drinking, were not drunk. The defendant said he was not drunk, yet the defendant tells Oscar Olson he was drinking. He tells the investigator, Jack Jenkins, that he was drinking or it would not have happened. He made the same statement over in the jail to the witness Glasscock. Now, another thing, stop and consider what this witness Nelson was doing; she was trying to do everything she could to help the defendant in this case, Theodore Roosevelt Glenn. She even went so far as to say she never discussed anything about what her testimony was going to be here today. How in the world would she have ever gotten to the witness stand if she had not talked it over with the attorneys. I merely ask you that to show what lengths the witness would go to. You have heard inconsistent statements. She says she can't remember all of her convictions. I have not been in Alaska a long time. I have been here a year or longer. I do not think the native population as a whole all have a reputation of being drunkards and good-for-nothings. I think that was a gross injustice for counsel to make any such statement. Some, yes.

Now, then, the next thing Mr. Shaw tossed about was the Government's witness Glasscock. He said, oh, that man is a [139] convict: you can't believe him. True, he is a convict. He was convicted in this court by your present members of the United States Attorney's office, a young boy on his first convic-

tion and now serving time at McNeil Island. I do not know what particular love he would have for our office that he would come back up here to help us. We do not have any control over him but I do admire the boy for being honest and trustworthy and truthful now.

The next thing Mr. Shaw talked about—he said, now this proposition that the defendant was supposed to have made to Mr. Glasscock over at the jail—one big room—now, there is one big room but there is also a little room, the little boys' room. Don't forget about that room. And one thing I want to impress upon you that that is not merely the case of the prosecution against that of the defendant. You heard Miss Nickita testify and tell exactly what happened as to her version and then on top of it you heard the statements that the defendant made in the jail to the witness Glasscock. Now, the defendant denies everything, he denies that he had ever slapped her, denies that he was drinking, yet the deputy marshal Olson, the criminal investigator for the Alaskan Native Service, Mr. Jenkins, they stated that the defendant told them that it would not have happened if he had not been drinking and drunk; that he had to slap her. He stated that to Glasscock also. He has lied there. And then Mr. Butcher started his argument.

Now, Mr. Butcher stated that he regrets all the sordid details that had to be brought out. I think that Mr. Butcher didn't regret them too much. When I was asking the questions of the witness it was obvious to all of you. And he starts talking

about people seeking the normal type of desire and then the abnormal. Now, Mr. Butcher said a man would not do the normal act and then the abnormal act. Well, now, let's just wait a minute. I did not hear any evidence or testimony or anything else that this defendant completed the normal acts before he started in the other. For all I know his passions rose as he started in the normal and that is what I must assume from the testimony that has been given here and then he says that you heard the witness Jack Jenkins take the stand and say that his reputation was poor but that yet Mr. Jenkins could never tell you of a conviction. He was asked if he knew of the defendant having any prior convictions. Well, that is something to consider but I will tell you something else. You can consider that as to his reputation as a law-abiding citizen. I imagine if John Dillinger had been apprehended before his death and were on the witness stand, could anyone have gotten up and said he has prior convictions? Yet look at his reputation and I want you to consider that as to the value of this now.

Another thing, ladies and gentlemen, I am very glad that Mr. Butcher brought forth that this came to light when Mr. [141] Jenkins of the Alaskan Native Service went to this young girl. I don't know if you would prefer for her to lie at that time or not but the girl did not come up to him or to Mr. Butcher himself. Now, if the investigator goes to her and asks her, what else can she say? It was not the girl coming up, as he would have this

picture painted, and trying to extract money out of him, going to get him in trouble. Frankly, I do not see anything wrong with this young girl asking Mr. Glenn for \$10.00. It seems as though she must have earned it; she must have done \$10.00 worth of house work for the period she was out there. She must have been entitled to a little money out of this unless her reward was in other ways.

You have noticed the appearance of all of these witnesses on the stand and you have noticed the inconsistencies. You heard Eva Nickita testify as to the mouth and you heard her testify as to the anus. Now, counsel said there was no evidence of the anus and the penis—of the penis in the anus. Now, I do not know how they could ever feel there was insufficient evidence on that when the poor girl had to get up, turn her rear to this jury, everybody in the court, and put her hand back there. Now, Mr. Butcher said her hand was right here. I don't intend to put my hand where. You folks all know where she put her hand and even to go further, he said there was no evidence of a penetration. The girl just before that didn't know what a penis was and everybody made me go into more detail [142] to bring forth all this and there was testimony as to what was between his legs and hanging down and went in her anus. And they tell me there was insufficient evidence. It is beyond me how they can even say anything like that. This defendant has denied it and said, no, he didn't do that, didn't put my mouth there and didn't do what Count III says I did. He has denied it in court but over

in the jail, you know how people get to talking, possibly people that would do something like that are generally the type that will brag about it. Mr. Butcher was talking about this proposition. Mr. Shaw, I believe, said where could they go in the big room. That might have been the reason why he was telling the witness Glasscock about this in this case, it just might be the reason he was telling about it. I don't know why. You have seen where he was contradicted in several ways, even his own witnesses have contradicted each other. They keep talking about why the girl didn't come in here until two years later. Frankly, she might not have known it was a crime and she certainly wouldn't have been doing this for the threat of \$10.00. When they talked about the letter—now how could there have been any such thing as that if it did not come out until the criminal investigator for the Alaskan Native Service goes to her. Counsel for the defendant brought that out right in front of you, talked about it, so that would have to do away with any of these threats for the \$10.00. I think you can tell a witness who is telling the [143] truth. You are the judges of that as to whether a witness is lying or telling the truth.

Now, I want you to take into consideration what interest does Miss Nickita have in this trial? What is she going to gain? What is Mr. Glasscock going to gain? I don't think Mr. Glasscock would have any particular love for an office that had put him in prison unless he certainly wanted to tell the truth. The District Attorney's office has no control

over a prisoner once he is sentenced; everyone knows that; that is common knowledge. You could not say that we had done him a favor by putting him in prison. He is a young boy, his first offense, as he has so testified to. Then you heard Minnie Nelson take the stand. She was caught in many inconsistencies and they were even talking about what she said little Eva said when she returned from Mr. Glenn's house. Now, I believe if you will remember and check the testimony that she said that Eva Nickita did not return to her house but returned to Eva's own sister's house. She herself said that and she says this about the ring and everything else. She cannot remember all of her convictions. She said that Eva was dressed and then before that, just before that, she said, no, they were all asleep. Now, I do not know how you could put any weight or credence to that evidence and on top of that it did not even go to the testimony, other than to say that the girl went voluntarily, and yet, the defendant testified that he heard Minnie Nelson say, [144] Eva, put your clothes on, we don't want you here. So the girl went voluntarily. I just do not see how you can put any credence in any such testimony as that. Then the defendant took the stand. Now, what interest does he have in the outcome of all this? Take that into consideration and then you heard the character witness take the stand, one character witness said he had a good reputation there but Benedict Arnold at the time he was convicted could have probably produced thousand of character witnesses. He was a great

man but a character witness of good character is not of too much value nor do I consider a good character witness of a poor reputation of too much value. I think it is better than someone saying it is good but that is for you folks to decide.

Ladies and gentlemen, I have confidence that you will find this defendant guilty as charged. Thank you.

(Whereupon, the court reads the instructions to the Jury.)

The Court: Any exceptions?

(Whereupon, counsel for plaintiff and counsel for defendant, together with the reporter, approach the bench and the following proceedings were had out of the hearing of the jury.)

Mr. Butcher: I except to the court's failure to accept and include among the instructions the proposed instruction of the defendant regarding the definition of the "crime of sodomy." I also take exception to Instruction No. 4 on the grounds that the presumption of innocence applies both to the innocent and guilty until such person is proved guilty and is not restricted to innocent persons and is an incorrect statement of the law on the subject. That is all, your honor.

(Whereupon, counsel for plaintiff and counsel for defendant, together with the reporter, return to their respective seats in the courtroom and the following proceedings were had before the court and jury:)

The Court: The bailiffs may be sworn.

(Whereupon, the Deputy Clerk swears Thomas Merton and C. J. McKinney, as bailiffs in charge of the trial jury.)

The Court: The jury will now retire to the jury room to deliberate on a verdict in charge of the bailiffs.

(Whereupon, the trial jury in charge of the bailiffs above-named retired to the jury room.)

(September 24, 1953, 3:22 o'clock p.m.) [146]

Whereupon, at 10:00 o'clock a.m., September 25, 1953, the trial jury in charge of their sworn bailiffs, Thomas Merton and C. J. McKinney, return to the courtroom and the following proceedings were had:

The Court: Ladies and gentlemen of the jury, have you reached a verdict?

The Foreman: Yes, your honor.

The Court: If so, you may hand it to the bailiff.

(Whereupon, the Foreman hands the verdict to the bailiff, the bailiff hands it to the court, and the court hands the verdict to the Deputy Clerk with the instructions that the verdict be read:)

Deputy Clerk: In the U. S. District Court for the District of Alaska, Division No. Three at Anchorage.

[Title of Cause.]

We, the Jury, duly impanelled and sworn to try the above-entitled cause, find the defendant guilty

as charged in Count I of the indictment and not guilty as charged in Count II of the indictment.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

/s/ David L. Crusey, Foreman." [149]

[Endorsed]: Filed February 5, 1954.

[Endorsed]: No. 14230. United States Court of Appeals for the Ninth Circuit. Theodore Roosevelt Glenn, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed: February 10, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14230

THEODORE ROOSEVELT GLENN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS

Pursuant to Rule 75 of the Rules of Civil Procedure as applicable in appeals from conviction under Federal Rules of Criminal Procedure, defendant-appellant hereby states the points on which he intends to rely on his appeal from the final Judgment herein as follows:

(1) The Court erred in denying the defendant's Motion for Acquittal, made at the time the government rested its case.

(2) The verdict is contrary to the weight of the evidence.

(3) The verdict is not supported by substantial evidence, and the testimony of the complaining witness is not corroborated.

(4) The Court erred in refusing to allow the defendant to cross-examine the complaining witness on incidents of previous unchastity with other persons.

(5) The Court erred in refusing to permit the defendant to cross-examine the complaining witness as to previous false statements made to the Grand Jury and other persons regarding her age.

(6) The Court erred in permitting the witness, Glasscock, to testify of other offenses occurring since the defendant was indicted.

(7) The Court erred in permitting the District Attorney to elicit from the witness, Glasscock, in the presence of the jury, reference to the crime of "murder", on which the defendant has been previously indicted and on which he has not stood trial.

(8) The Court erred in denying defendant's motion for a mis-trial.

(9) The Court erred in instructing the jury as charged in Instruction No. IV.

(10) The Court erred in permitting the prosecuting attorney, in his closing argument, to refer to other offenses not in evidence.

(11) The refusal of the Court to exclude from the courtroom, on the timely motion of defendant's counsel, all witnesses who were called to testify on behalf of the government.

/s/ HAROLD J BUTCHER,
Attorneys for Defendant-Appellant

[Endorsed]: Filed Apr. 26, 1954. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL

Pursuant to Rule 75 of the Rules of Civil Procedure as applicable in appeals from conviction under Federal Rules of Criminal Procedure, the defendant-appellant hereby designates for the record on appeal the entire record from the Indictment to the Judgment of Conviction and Sentence.

/s/ HAROLD J. BUTCHER,
Of Attorneys for Appellant

[Endorsed]: Filed Apr. 26, 1954. Paul P. O'Brien,
Clerk.